



**Oversight of the Administration's Implementation  
of the Comprehensive Antiapartheid Act of 1986  
(Public Law 99-440) and an Assessment of Recent  
South African Political and Economic  
Developments**

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# Oversight of the Administration's Implementation of the Comprehensive Antiapartheid Act of 1986 (Public Law 99-440) and an Assessment of Recent South African Political and Economic Developments

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POLITICAL AND ECONOMIC DEVELOPMENTS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEES ON INTERNATIONAL ECONOMIC  
POLICY AND TRADE, AND ON AFRICA  
OF THE  
COMMITTEE ON FOREIGN AFFAIRS  
HOUSE OF REPRESENTATIVES  
ONE HUNDREDTH CONGRESS  
FIRST SESSION

TUESDAY, JUNE 16, 1987

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# OVERSIGHT OF THE ADMINISTRATION'S IMPLEMENTATION OF THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986 (PUBLIC LAW 99-440) AND AN ASSESSMENT OF RECENT SOUTH AFRICAN POLITICAL AND ECONOMIC DEVELOPMENTS

TUESDAY, JUNE 16, 1987

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE, AND THE SUBCOMMITTEE ON AFRICA,  
*Washington, DC.*

The subcommittees met at 1:00 p.m., in room 2172, Rayburn House Office Building, Hon. Howard Wolpe, presiding.

Mr. WOLPE. The hearing will come to order.

Eleven years ago today, 20,000 young black South Africans marched through the streets of Soweto, igniting a firestorm of urban black resistance and government repression.

Over the next 16 months, at least 700 people died, the majority shot by South African police, while thousands more were injured, flogged and tortured.

In response, the United States and other western nations mostly temporized, offering sympathetic rhetoric backed by little action, save a mandatory United Nations arms embargo.

Today, the political reality which South Africa faces on both domestic and international fronts has changed fundamentally. Since the early 1980s, black South Africans have built a powerful national movement to end apartheid, prompting the government to pursue a dual strategy of nominal so-called reform and heightened state repression, aimed at preserving the core structures of white domination. Still, most informed observers including even the influential Afrikaner Broederbond or brotherhood cultural organization and Foreign Minister Pik Botha, admit the virtual inevitability of a black majority government and a black president within the foreseeable future.

In the external sphere, most western nations have responded to these new circumstances by applying economic sanctions. These are meant both to register moral outrage and to signal to the government that it will have no choice but to suffer significant new costs, in addition to the internal strains it already feels, if it continues to turn away from genuine negotiations with the nation's majority population.

It is fitting then that the Foreign Affairs Subcommittees, both the Subcommittee on Africa and the Subcommittee on International Trade and Economic Policy, hold its first hearings on South Africa since the passage of the Comprehensive Anti-Apartheid Act on the anniversary of the bloody Soweto uprising.

This hearing gives the subcommittees their first opportunity since the passage of the Comprehensive Anti-Apartheid Act of 1986, to review the Administration's implementation of the Act. In many respects, the Administration's implementation of the Act is laudable. Agencies were often quick to execute the provisions of the Act, and many consulted with Congressional Staff in the promulgation of regulations.

Nevertheless, there are other areas of the Act in which the Administration's performance has been less than stellar. Among the many issues to be explored today are the Administration's decision to allow large quantities of South African uranium to be imported into the United States despite Congressional prohibition; the Administration's failure to call an international conference of industrial democracies to coordinate sanctions and to vote in the United Nations for additional sanctions as recommended in the legislation; and the continued exportation of lobster tails to the United States.

In addition, the hearing will provide an update on economic and political developments and U.S. business activities in South Africa since the passage of the Act.

Not surprisingly, some who were initially skeptical about the utility of sanctions, have already announced that they have failed, and point to the recent white parliamentary elections in which the ultraconservative parties captured 30 percent of the vote. It would be truly astonishing if the immediate reaction of the South African, or any other government to increased internal and external pressure were anything other than defensiveness.

By adopting economic sanctions, Congress put into place, a medium- to long-range strategy designed to raise the economic burden a regime confronting formidable internal opposition must already bear, to send a signal that the regime will continue to be denied economic and diplomatic support internationally, and to encourage legitimate opposition forces.

Beneath their bravado, South African whites are gradually becoming concerned about the accumulating costs of internal resistance and external sanctions. South African economic analysts admit that, even under the most optimistic assumptions, per capita economic growth will stagnate, unless sanctions are lifted.

In November, the economic adviser to the South African Reserve Bank pointedly noted that, "the upswing in the economy is being inhibited by the effect of trade, and more especially, capital sanctions."

Of greater long-term significance than the law and order appeals featured in the last election are the recent public opinion poles which demonstrate that three times as many whites prefer to accelerate the pace of reform as to slow it down.

In just the last few months, the White Dutch Reformed Church has renounced its previous policy for apartheid. The Broederbond has circulated a working document implying that any new consti-

tution would have to be acceptable to the African National Congress.

Over 300 faculty members at Stellenbosch University, the intellectual citadel of Afrikanerdom, have called upon the government to scrap all remaining discriminatory legislation and make a commitment to share power with blacks. And three credible independent candidates for parliament have shown that there is a new left Afrikaner opposition that approaches 25 percent of the Afrikaner vote in urban and white collar districts.

Other indices of declining white morale reminiscent of those that appeared in Rhodesia, including rising emigration—13,711 whites left in 1986, and a 67 percent increase over that of 1983. Rampant draft evasion—over 25 percent defied the 1985 call-up with the government subsequently refusing to publicly update their statistics—and swelling suicide figures—in 1986, 453 members of the South African defense forces attempted suicide, a 500 percent increase in suicide attempts over the previous year, and 24 succeeded.

In my view, much of the criticism we have heard from opponents of sanctions reflects not only the discomfort with sanctions against a country not considered as falling within the Soviet orbit, but the persistence of a racial double standard in our foreign policy.

Together, in varying proportions, these attitudes help explain why there can be early and vocal skepticism of sanctions against South Africa with no comparable skepticism voiced about the immediate effects of sanctions against the Soviet Union, Afghanistan, Libya, and Iran.

Can you imagine the same conservative voices who point to the recent rightward tilt in the last month's whites-only elections as a reason to back off from pressuring Pretoria also calling for a relaxation of pressure against Moscow when the Soviets periodically tighten the screws on their dissidents?

Such a mixture of racial attitudes and ideological thinking help explain how there can be expressions of deep solicitude for black jobs possibly jeopardized by sanctions, disregarding the pro-sanctions sentiments of popular black political organizations and trade unions, when there are not similar cries of anguish about the fate of Polish, Russian or Libyan workers. And they help explain why blacks leading an armed struggle against apartheid can be quickly labeled "terrorists" while other insurgents, such as those in Nicaragua and Afghanistan, are hailed as "freedom fighters" deserving of U.S. moral and material support.

Our testimony today will be divided into two panels. The first panel will focus on the implementation of the Anti-Apartheid Act, and the witnesses will include:

Dr. Chester Crocker, Assistant Secretary of State for African Affairs;

Mr. Alan Keyes, the Assistant Secretary for International Organizations;

Mr. Richard Newcomb, the Director of the Office of Foreign Assets Control, the Department of the Treasury;

Mr. Paul Freedenberg, the Assistant Secretary for Trade Administration, of the Department of Commerce;

Mr. James Woods, the Deputy Assistant Secretary for African Affairs, of the Department of Defense.

And our second panel this afternoon will consist of:

Gail Gerhart, Professor of Columbia University;

Ronald Goldman, the Associate Dean of Boston University;

Stanley Greenberg, the Associate Director of the Southern African Program at Yale; and

Meg Voorhes, of the Investors Responsibility Research Center.

All of these panelists will assess the current economic and political situation within South Africa.

Before turning to our panel, I would like to invite my distinguished colleague and ranking member of the Africa Subcommittee, Mr. Burton, to make any opening remarks he might care to make, and then we'll turn to the Chairman, if he has arrived, and the ranking member of the International Economic Policy and Trade subcommittee.

Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman.

I'm glad that we have this opportunity to practice our oversight duties with regard to the Comprehensive Anti-Apartheid Act of 1986.

Sometimes we pass foolhardy and counterproductive measures, and then blissfully go on and wreak havoc somewhere else without bothering to turn around and survey the mess we've left behind.

In fact, I have to admire you for having hearings at this time, despite the fact that most of the supporters of sanctions in South Africa are now backtracking and changing their positions.

On the House floor last year, I said, "I think we are involved in an orgy of self-righteousness that is going to hurt the very people we want to help." I said that 600,000 blacks were going to lose their jobs, and that would leave about 3 million blacks without sustenance. Now the largest black trade union in South Africa, the Cosatu, has just come out with a report, warning that sanctions could result in the loss of 2 million jobs by the year 2000.

In April, COSATU Vice President Chris J. Dlamini, told the BBC, some people are confusing divestment with disinvestment. We have never called for companies to pull out of South Africa. Bishop Tutu I understand has also clarified his position. He now says that he is for sanctions but against disinvestment. I guess that's like being for breaking eggs, and against omelets. I'm not sure.

The South African Council of Catholic Bishops reversed its position on sanctions in a report this January. According to the report, there is no doubt that sanctions are and will become very hurtful to the economic and therefore social fabric of this country. In fact, the Bishop's report blames sanctions for, "consolidating the government in its retreat from meaningful, and indeed, any reform."

Just last week, William Raspberry, columnist in the Washington Post, pointed out, "the smaller the U.S. economic and diplomatic presence in South Africa, the less the American influence there."

The Catholic Archbishop of Durban, Dennis Hurley, said that sanctions leading to disinvestment, "would precipitate conflicts that would go on for 20 years and end in total devastation for the country."

One black worker in an interview by the BBC that was shown on the MacNeil Lehrer News Hour 2 weeks ago said, "when the Amer-

ican companies leave South Africa, then many people are definitely going to starve."

Even Winnie Mandela in a recent interview in a Swedish newspaper, expressed misgivings on the effects of sanctions. What seems to be happening in South Africa, and I would be happy to hear the views of the Administration in our expert panel on this, is that South African blacks are beginning to get pretty angry at their supposed leaders who are busy advocating policies that put them out of work.

The whites are of course the most shielded from the effects of sanctions. Over 40 percent of white Afrikaner adults work for the South African Government. As the South African Bishops Conference stated in its January report, "those responsible for policy in the government, and in government supporting roles, have effectively shielded themselves against the impact of deprivation. They will be the last to feel its effects."

With all this, and the national party's election sweep last month, in which they used sanctions as a rally round the flag issue, sanctions seemed to have been a resoundingly bad idea. While the threat of sanctions may have served to concentrate the minds of South Africans on the urgency of our concern, the reality of sanctions is being rejected by South Africans across the political spectrum.

I think there must be a better way, and that it's not too late to turn off this road and onto a new approach that will help lead South Africa more peacefully toward a truly democratic future without Apartheid or any other form of tyranny.

I hope that our witnesses today will help us find that road, as difficult as that may be.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Burton.

Mr. Bonker has not yet arrived.

Let me yield now to Mr. Roth, the ranking member of the International Economic Policy Trade subcommittee.

Mr. ROTH. Thank you, Mr. Chairman.

I appreciate having the opportunity today to review the effects of the Anti-Apartheid Act on the people living in South Africa. Judging from some of the reports we have received, the reviews are mixed. Many people and organizations which originally supported sanctions against Pretoria have changed their minds.

A central question emerges in looking at the effects of sanctions in South Africa: Have the supporters of apartheid in South Africa been strengthened, and have those who seek political reforms been weakened? This, I think, is a key issue. Have these sanctions served as a catalyst for reform or as a catalyst for retrenchment? Have these sanctions enhanced the influence of the United States in South Africa, or have they served to undermine it? Who is bearing the brunt of the costs of these sanctions? How many people have we put out of work in South Africa and in this country?

These are some of the questions before us today.

I would like to add to the record, if I may, Mr. Chairman, an excellent piece just completed by Heritage Foundation, and I'd like to introduce that into the record, if I may.

Mr. WOLPE. Without objection.

Mr. ROTH. Thank you, very much.

[Article by Heritage Foundation follows:]

# The Heritage Foundation **Background**

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June 5, 1987

## U.S. SANCTIONS ON SOUTH AFRICA: THE RESULTS ARE IN

### INTRODUCTION

The first results of Western economic and political sanctions against the government of South Africa are in: Apartheid's supporters have been strengthened while those seeking reforms have been weakened. The evidence of this is abundant:

- ◆◆ In the whites-only election last month, the ruling National Party (NP) was returned with even greater control over the Parliament than before.
- ◆◆ In the election, the racially moderate Progressive Federal Party (PFP) was replaced as the official opposition party in the Parliament by the pro-apartheid Conservative Party (CP). This means that for the first time since the institutionalization of apartheid in 1948, the Pretoria government will be criticized in the Parliament not for moving too slowly to abolish apartheid, but for moving too quickly.
- ◆◆ U.S. influence in Pretoria has been reduced, as the South African government has rejected what it views as unacceptable foreign interference in its internal affairs.
- ◆◆ Economic sanctions have not damaged the South African economy severely. Most South African producers have found new markets for their products. Further, sanctions have caused a short-term stimulus, as the economy moves to create its own substitutes for former imports.
- ◆◆ To the extent that the effects of sanctions have been felt in South Africa, they have been felt by blacks--precisely the people they were supposed to help.
- ◆◆ Disinvestment by U.S. corporations doing business in South Africa also has set back the anti-apartheid campaign. U.S. corporations have sold their manufacturing plants and assets to South African businessmen at firesale prices. The South Africans then are free to

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terminate U.S.-created social responsibility programs and once again can bid on South African government contracts.

◆◆ More disturbing, these negative reactions to sanctions have overtaken many positive changes that have taken place over the past several years within the Afrikaner leadership. Key elements of the governing coalition had begun to rethink their positions on apartheid. Sanctions have chilled many of those reform efforts.

In light of this overwhelming evidence, it is puzzling why the Reverend Leon Sullivan, author of the Sullivan Principles (which suggest a code of corporate responsibility for U.S. firms operating in South Africa), just days ago called for complete corporate withdrawal from South Africa. Perhaps the Reverend Sullivan, who has not visited South Africa since 1980, simply is unaware of the setbacks to reform there.

Congress soon will be looking at South Africa once again with a view to imposing new and harsher sanctions against Pretoria. June 12 will mark the first anniversary of the imposition of the nationwide state of emergency in South Africa, and it is virtually certain that congressional and media liberals will use that date to focus attention on the lack of progress in eliminating apartheid over the last year. They hope to build a climate of public sentiment throughout the U.S. that will support the imposition of new sanctions in October, when, by law, Ronald Reagan will have to report to the Congress on the situation in South Africa.

**Wrong Predictions.** Instead of calling for more sanctions against South Africa, Congress should examine closely the results of the sanctions already imposed by the West. Predictions by advocates of sanctions have been proved wrong: Far from pressuring Pretoria to speed the pace of reform, sanctions have brought the reform process to a halt and have given South African State President P.W. Botha an excuse to call an election that he knew his party would win. Nor have sanctions resulted in greater U.S. influence in southern Africa; U.S. influence in Pretoria is down sharply, without an offsetting increase in influence throughout the black community in South Africa.

More important, certainly, is the fact that sanctions have not hurt "only the whites," as they were intended. Instead, white South Africa, largely shielded from the effects of sanctions, has watched unaffected as the burden has fallen on blacks. U.S. and other Western corporations active in South Africa, instead of pressuring the government for reform, as they had been over the last several years, increasingly have opted to leave South Africa altogether. In doing so, they are selling their assets to South African businessmen who are getting rich in the process, while terminating the companies' social responsibility programs which enormously helped black communities.

Sanctions thus not only have not done what they were supposed to do, they have actually been counterproductive, and have set the anti-apartheid struggle back several years. This is precisely what many critics of sanctions predicted. The evidence of this is so compelling, in fact, that the African National Congress, the Pretoria regime's fiercest foe, now seems to be having second thoughts about sanctions. At a late-May conference for business executives in London, ANC President Oliver Tambo indicated to assembled business leaders that sanctions were causing more harm than good in South Africa. The ANC has

sponsibility for 309, issued an interim rule permitting South African uranium to be brought into the United States for further processing and reexport until June 30, 1987, and drafted regulations permitting the imports of uranium hexafluoride UF-6 originating in South Africa.

In fact, according to the NRC, six of the eight pending applications for the importation of South African uranium are for uranium hexafluoride. These six would represent 73 percent of the amount imported, a marked increase from 1985 and 1986, when UF-6 comprised only 17 percent and 22 percent respectively, of South African imports. These statistics suggest to me that the industry is circumventing Congressional intent to ban uranium imports by jumping through a gaping loophole created by Treasury.

And I guess the question I want to ask, Mr. Newcomb, is this: Are you justifying this massive loophole on the basis of lack of clarity in the law, one. Is it for national security reasons, Mr. Crocker, since this is your province, that we feel justified in continuing this.

Or thirdly, is there something in the draft of the amendment that permits the Administration to say that as you've done with the Boland Amendment, that it applies to every department in the government except one, and that is you, Treasury.

Mr. Newcomb, I know the question is substantially biased, and I admit it, but I think you've violated the law.

Mr. NEWCOMB. Let me respond, Congressman, by saying that the uranium question was perhaps one of the most difficult issues of interpretation that Treasury faced in the implementation of the Act. I would respectfully disagree that I do not believe we are violating the law. And I will explain why.

As far as uranium imports for processing and reexport, in a technical sense, the usual customs definition of import and the definition of import in our regulations would mean bringing goods into the United States with an intent to unload it, and no distinction is generally made between goods imported for consumption and those imported for processing and reexport.

In the case of uranium, however, there was legislative history that raised questions as to what the meaning of import in this situation was intended by Congress. We were told by industry representatives that there would be substantial irrevocable harm to the industry because of loss of long term contracts, as our colleague from the Energy Department has so eloquently explained today, these long term contracts once ended would be—

Mr. RICHARDSON. Yeah. Mr. Newcomb, let me just reclaim my time because I was the author of this amendment, and you never consulted me as to what I meant. And I was extremely clear. I wanted to ban uranium for two reasons: one, because of my overwhelming distaste for the human rights practices of South Africa. And secondly, because we as New Mexico are the largest "grower" or producer of uranium in an industry that is virtually dead.

I wanted to save some jobs for my people in addition to doing the right thing. And when I draft an amendment with the help of this Committee and several Members of the Congress, it passed the House by unanimous vote, when you say you are banning uranium, I ban uranium. I banned coal and uranium. It means that we don't want any uranium imported.

Now, what are you telling me? What is this legislative intent? What about the author of the amendment, the author of the bill, the author of this legislation? What are you telling me?

Mr. WOLPE. Well, before the gentleman responds to that, I want to interrupt just for a moment.

Dr. Crocker has another commitment he must make, and I wanted to give the Secretary an opportunity to leave at this point. I thank you and I'm sorry it has gone as long as it has, and I understand that Mr. Freeman can take your place at the witness table.

Mr. CROCKER. Thank you very much, Mr. Chairman.

Mr. WOLPE. Thank you.

Mr. RICHARDSON. And you know, Mr. Newcomb, with this reexport exception, it strikes me that we've had trade sanctions against other countries: Libya, Nicaragua, Afghanistan. Did you make those interpretations with those countries, or is there a legislative history that I'm not aware of?

Mr. NEWCOMB. In those particular sanctions programs, those were executive orders that implemented those programs. And so we have a different kind of situation in this particular case.

However, I would like to explain that in light of the uncertainty that I outlined in my prepared remarks, and the outline of the uncertain legislative history, that the Treasury Department determined that for a brief period of time, this six-month interim, as far as uranium for processing and reexport, that the best course of action was to preserve the status quo while seeking a clarification.

We are mindful of the concerns that you have expressed to us and the Committee has expressed to us. As I indicated in my prepared remarks, we anticipate making a decision and have something published in the Federal Register by the end of this month clarifying that issue.

Let me briefly go on to the question of uranium hexafluoride because you did raise it and I want to be able to answer that.

The language of Section 309 and the standing Customs law in our view left no room for any other interpretation. Congress chose a very narrow definition of those South African uranium articles to be banned, as opposed to comprehensive language, used for example, in the same section for textiles and coal. And we have found no legislative history to the Senate bill that indicates a broader coverage than the plain meaning of the term, uranium ore and oxide.

Thus, we have no basis for exclusion of uranium hexafluoride or other chemically distinct uranium products under Section 309.

Mr. RICHARDSON. You can't have it both ways. I mean, we also, you permit the reexport of textiles. I mean, is there a scientific reason why you're doing this?

I'm sorry Mr. Crocker had to leave but you tell me the industry said they were being hurt, the domestic uranium industry? Is there a foreign policy consideration? Is it that we don't have any uranium in the United States, or is New Mexico's uranium that bad?

Mr. NEWCOMB. No, I—

Mr. RICHARDSON. Why don't you—

Mr. NEWCOMB [continuing]. I do have an answer for that but I will defer—

Mr. FREEMAN. I'm Chas Freeman, a Senior Deputy to Assistant Secretary Crocker. And just to answer you very specifically, the question you've raised, while the effect of this ban as the Treasury order, if it became final, interprets it, would be to damage U.S. nonproliferation interests, particularly as they relate to Asia. At no point in the discussions in the executive branch have policy considerations of that sort been weighed seriously.

That is to say, the basis for the interpretation of the statute has been normal rules of statutory procedure, as interpreted by the Treasury Department.

Mr. RICHARDSON. So there are no foreign policy considerations?

Mr. FREEMAN. Not as they affect the interpretation of this particular provision of law.

Mr. RICHARDSON. Well, so Mr. Newcomb, it sounds like you're alone. And I'm just trying to—I'm just trying to be fair to you. It strikes me as incredible that you've done this, and I don't know what the redress here is. I hope the Chairman considers reform legislation a reinterpretation of what we did before.

Mr. WOLPE. Let me, if the gentleman will yield on that point, let me just say that I fully share the gentleman's conclusion. I think the Administration, not unlike some other situations, are being very dramatically exposed at this point, of violating the clear intent of the Congress.

Two-thirds of South African uranium imported between 1981 and 1986 in the United States was processed for reexport to foreign customers. If we had intended the ban to apply only to uranium intended for U.S. consumption, there would be no reason to do the uranium ban. That would have been, it would have been nullified if that was, there's no purpose for that kind of amendment and that kind of sanction.

And that's clear and anyone reading the legislation knowing that uranium was included along with coal and other products in a flat ban prohibition. The only people that seem to be confused are some folks within the Administration on this one.

Mr. NEWCOMB. Well, let me comment on that by saying that there was a colloquy among Senators Lugar, McConnell, and Ford, which suggests that only imports for consumption were intended to be banned.

Mr. WOLPE. Is there any reference to uranium there, in that colloquy?

Mr. NEWCOMB. The colloquy emphasized the large number of jobs that depended on processing and enrichment of uranium and stressed that Congress had not intended to harm U.S. workers.

Mr. WOLPE. I would like to ask you to read the text of that colloquy. Is there any specific reference to uranium in that conversation?

Mr. NEWCOMB. Mr. Chairman, I don't have that colloquy with me. However, in reviewing the legislative history and the information we've received, I can assure you that it will be reflected in our final rule.

Mr. WOLPE. Unless I'm improperly advised on this by staff, I think you will find there's not one reference to uranium in the course of that colloquy.

Mr. NEWCOMB. The colloquy occurred, I'm advised by, in an amendment to take uranium out of consideration at that time.

Mr. RICHARDSON. Mr. Chairman.

Mr. NEWCOMB. It was a colloquy which occurred I'm told on August 15, 1986.

Mr. RICHARDSON. I guess, and this will be the last question. I would like unanimous consent to submit these letters for the record to the Treasury representative.

Mr. Newcomb, have you read any of my colloquys on this amendment as the author of the amendment?

Mr. NEWCOMB. We have certainly read the letters that you submitted and we are aware of the legislative—

Mr. RICHARDSON. Well, you know, I offered the amendment on the floor to the Foreign Assistance Act once. It was approved. I've participated in colloquys right and left.

I believe I've offered it to other vehicles that were even not germane. Is that a factor, the author of the amendment? Just say it. No, you won't insult me.

Mr. NEWCOMB. The legislative history of the Senate version is the legislative history that we look to in interpreting this act.

Mr. RICHARDSON. Why is that? Is the Senate a superior body to the House?

Mr. NEWCOMB. Not meaning in any way to suggest that.

Mr. WOLPE. If I could just reclaim, or if the gentleman would yield once again?

Mr. RICHARDSON. Yes.

Mr. WOLPE. I want to come back to this colloquy for just a moment.

My understanding of this colloquy is that it never in fact took place on the Senate floor, is that correct?

Mr. NEWCOMB. We are told—

Mr. WOLPE. But it was submitted in writing in the record subsequently?

Mr. NEWCOMB. I have no firsthand knowledge of exactly how it took place. I wasn't there at the time. However, we did receive letters in writing from the Chairman of the Senate Foreign Relations Committee indicating that it was a part of the permanent record.

As far as going behind those kinds of insertions, I just have no knowledge, other than to know that it is part of the record.

Mr. WOLPE. Did you also look at the other parts of that same Congressional Record, such as my own statement in which I indicated that H.R. 4868 as amended by the Senate, bans imports of textiles, agricultural products, coal, uranium and steel from South Africa, as well as any products produced, manufactured, marketed or otherwise exported by South Africa parastatal agencies?

Mr. NEWCOMB. I can assure you that we were mindful and aware of the conflicts that existed between the various views here.

Mr. WOLPE. And why did you—

Mr. NEWCOMB. There is a confusion in the legislative history as to exactly what was intended, and it's for that very reason that we—

Mr. WOLPE. I really don't think—

Mr. NEWCOMB [continuing]. Have this holding action for a period of 6 months to preserve the status quo while seeking a clarification.

And as I indicated in my prepared remarks and what is submitted for the record, we anticipate having a decision on that by the end of this month.

Mr. WOLPE. Well, let me just say that I certainly was pretty deeply involved in the course of those conversations, not once, not one time was there even a hint in private discussions or in the public colloquys and dialogues in which I participated that we somehow contemplated this kind of broad exception with respect to the subject of uranium.

And that my hunch is that if this comes down to litigation, it won't even be a close question. And I certainly would hope if what you're saying is that a final determination has not been made, that you will go back and really check out the totality of that record.

I make the point one more time that a ban that would have contemplated the exception for uranium that was for purposes of reexport would have made no sense. We would not have offered that kind of prohibition.

Mr. NEWCOMB. Well, Mr. Chairman, let me say, we are mindful of your views. We have received your letter. We've received the letters of members of this Committee. We are reviewing it. And I can assure both you and Congressman Richardson that we will be mindful of those comments in finalizing our regulation.

Mr. RICHARDSON. Thank you, Mr. Chairman.

Mr. WOLPE. Thank you very much, Mr. Richardson.

Let me ask Mr. Bilbray, did you have some additional questions?

Mr. Freeman, two questions for you.

The State Department refers in its written responses to the indictment returned in Los Angeles for an attempt to violate the Arms Export Control Act and the Comprehensive Anti-Apartheid Act. Could you please describe this indictment including the role of a South African Defense Attache in detail?

Mr. FREEMAN. That matter remains under adjudication. I would have to consult with the Department of Justice which has responsibility for this matter in order to determine whether we could provide you a response on the open record at this time.<sup>1</sup>

Mr. WOLPE. OK. I would ask, though, that assuming that you are able to do so, that you would provide that in written form subsequent to this hearing.

During this Administration, how many defense attaches have left this country because of inappropriate activities, South African defense attaches?

Mr. WOODS. To my knowledge, sir, the case you refer to is the only instance I can recall where that charge was raised, and that's still under investigation. I wouldn't want to go into it any further.

Mr. WOLPE. In your report to the Congress—let me ask you one last question on the same subject—do our major European allies permit the stationing of South African defense attaches within their countries?

Mr. FREEMAN. I believe that in accordance with an E.C. decision, there is a common policy on this matter, and that they do not maintain defense attaches in South Africa. However, in at least

<sup>1</sup> See appendix 5.

one case, the South Africans do have defense attaches in a West European Capital.

Mr. WOLPE. That would be Portugal?

Mr. FREEMAN. No, I believe it's the United Kingdom.

Mr. WOODS. There are a couple of other examples, which we would give you off the record, where we think South Africa has put military personnel in another capacity, so that in effect they're able to maintain the function without having a military attache in uniform per se.

So there is more than one way to—

Mr. WOLPE. Why would that have to be off the record? Or?

Mr. WOODS. It would depend on how we had arrived at that conclusion. Let me look at it and see what we can provide. If necessary I will respond to you under separate cover.

I think one question is, we could provide an historic statement of where we have acknowledged South African military attaches, in which countries, when they have been withdrawn, and beyond that I'm not sure how far we can go.

Mr. WOLPE. I don't certainly want to know the intelligence basis for the information, but I see no reason why the surreptitious placement of South African defense attaches in other capitals ought to be a matter of classification for us?

And I certainly hope that that information can be—yes.

Mr. FREEMAN. With regard to Defense Attaches per se declared, I'd like to call your attention to the Report submitted by the Department of State to the Congress on relations of industrialized democracies with South Africa. This was submitted in compliance with Section 401(B)(2)(b) and Section 506(A) of the Act.

The United Kingdom Section, which appears at page 50, contains the following language:

Britain and South Africa have full diplomatic relations but Britain has withdrawn its military attaches from South Africa under a European Community Agreement of 1985. South Africa has been permitted to maintain its attaches in London but Britain has not accredited new ones.

Mr. WOLPE. In your report to the Congress, under Section 303, you determined, Mr. Freeman, that ten minerals imported from South Africa are essential to our economy and defense and unavailable from reliable and secure suppliers. These include antimony, chrysotile asbestos, industrial diamonds, metallurgical manganese ore, among others.

Yet, according to your written responses to other questions that we posed to you to the State Department, your preliminary plans for fiscal year 1988 envision disposal of these items from the stockpile because they have been determined to be surplus under existing legislative goals.

My question is, how could they be surplus in the context of the Anti-Apartheid Act, which is trying to reduce dependence on these imports?

Mr. FREEMAN. Well, if you have specific questions with regard to the particular minerals and metals in question, I may be able to answer them on the basis of materials that have been prepared, but the Department of State does not maintain the national stockpile of minerals and metals, and this area is one which is handled

in discussions which are sometimes quite controversial between the Congress and other agencies of the Administration.

Mr. WOLPE. Does the Department of Defense have a response?

Mr. WOODS. If we could have the specifics of what you're referring to, sir, I think that's a question that I'm not sure which department, perhaps several of us would have to take a hand in answering that.

Mr. WOLPE. Would you acknowledge that it would be somewhat anomalous to have a finding that these products are surplus in the context of the Anti-Apartheid mandate which calls upon the United States to make efforts to reduce their dependence upon these imports?

Mr. FREEMAN. I think there is a distinction between a strategic stockpile maintained for defense purposes, and the dependency of American industry over all, including for strategic purposes on imports from South Africa, and there are other provisions of the law which call for monitoring of increased American dependency, for example, on Soviet bloc nations.

Mr. WOLPE. Well, the Administration also reports that it is requesting statutory disposal authority for other minerals upon which you've reported we depend on South Africa, including platinum group metals and rutile. I guess the question really is, does the right hand know what the left hand is doing?

On the one hand, we say we want to reduce our dependence upon imports, on the other hand, we're reducing our stockpiles of these very minerals on the grounds that they are in surplus. I mean, which is it?

Mr. FREEMAN. Stockpiles are maintained essentially for defense purposes. Dependence of the American economy's a different matter. For example, in the case of the platinum group, the principal use of that group is in catalytic converters for automobiles, which is something that we have to do by law. That is, we have to equip automobiles in the United States with those converters.

It is not a defense purpose and it is not covered by the stockpile, as I understand it.

Mr. WOLPE. But again, are these policies not running in competition in conflict with one another? That's the question.

Mr. FREEMAN. I don't see any conflict between the two of them because they're directed at different purposes. One is directed at maintaining a stockpile for defense production purposes, and the other is directed at avoiding dependence on South African economy.

Mr. WOLPE. No, no. If we are saying that we want to reduce our dependence upon imports, for whatever reason, and you have another policy that is in fact reducing your stockpile and inventory of those materials, it seems to me at least, unless I am missing something, that those are policies or propositions that are rather in conflict with one another.

Mr. FREEMAN. The American economy, as I've said, is dependent on South Africa to the extent that the economy overall including all sectors, not just the defense sector—

Mr. WOLPE. Agreed, agreed.

Mr. FREEMAN [continuing]. Utilizes essential minerals of South African origin.

Mr. WOLPE. That's right.

Mr. FREEMAN. And this flow of materials isn't affected by stockpile sales of materials which are in excess of stockpiled goals related to defense purposes, so there really isn't any conflict, because the national defense stockpile is not intended to meet the needs of the entire U.S. economy.

And the legislation governing the stockpiles——

Mr. WOLPE. But isn't it the Defense Department that has concluded that these materials are in fact in such surplus that they are not really required to be stockpiled further, there is a suggestion at least of an availability of supply that is not really in question, it's not really vulnerable to disruption.

Mr. FREEMAN. I repeat that the two questions really are quite different, because the stockpile legislation specifies that it's to be used only to meet needs arising from national defense, and the purpose of the stockpile is to assure that sufficient materials are available to meet defense related needs in the event of a national defense emergency.

And the Agencies responsible for quantifying stockpile needs determine the quantities required and make legislative proposals to the Congress for acquisitions or disposals on that basis.

Mr. WOLPE. I understand what you're saying. All I'm trying to point out is what are we actually saying is that the South African source is not really that critical to our national security or defense requirements, at least——

Mr. FREEMAN. No, that is not what we're saying.

Mr. WOLPE [continuing]. We have now, we have so much on hand in our stockpile, that we feel perfectly comfortable in releasing some of those into the market?

Mr. FREEMAN. That's not what we're saying. We're saying that the American economy is heavily dependent in some sectors outside the defense sector on imports from South Africa of minerals and metals and that the maintenance of the American economy at a high level of production and efficiency is an important objective of the United States Government.

Mr. WOLPE. Let me move back to a subject that was covered earlier in part, that relating to the lobster industry importation of lobsters.

In a letter of January 21, 1987, to Robert Follick of New York City, Edward Gable, Director of Carriers Drawbacks and Bonds Divisions of the Customs Service, states that lobsters from South African territorial waters may be imported into the United States even if they are caught by small vessels operated by South Africans, and stored, rechecked for weight and grading, and repacked for containerization in South Africa, provided that they otherwise are processed on non-South Africa flag vessels.

Do you think this matches the intent of Congress when it banned the imports of lobsters and other foods from South Africa?

Mr. Newcomb.

Mr. NEWCOMB. Mr. Chairman, I would comment on that ruling that that was made following the longstanding Customs Service precedent in that area, as I recall in reviewing the ruling, the precedents go back to 1966, and I think in this particular situation,

the ruling that was requested, the Customs Service showed a consistent pattern of interpretations.

Mr. WOLPE. So it is true, then, that this policy is based upon a 21-year-old regulation at Customs that had nothing at all to do with sanctions, but was merely for purposes of meeting a requirement for country-of-origin marking?

Mr. NEWCOMB. It is true that it goes to the principles that Customs uses as far as country of origin determinations. I'm not sure that it was a regulation as it was longstanding Customs' interpretation. It's laid out in the ruling issued by Mr. Gable.

Mr. WOLPE. Was there any Congressional consultation before this policy was adopted?

Mr. NEWCOMB. Not to my knowledge. I don't know.

Mr. WOLPE. That will conclude the questions of this panel this afternoon.

I want to thank all of the panelists for their patience in experiencing a rather lengthy proceeding. We will have other questions for the record that we will be submitting to you, and hope you will respond to those in due course.

But let me thank you all for your assistance and cooperation.

Thank you.

Mr. BILBRAY. Mr. Chairman, Mr. Dellums also wanted me to thank you for the courtesy of having him here today. He had to leave but he wanted to thank you.

Mr. WOLPE. Fine. Thank you very much, Mr. Bilbray.

With that, we'd like to now invite the next panel to come forward.

Our panelists, there should be four—I see three. I hope the fourth panelist is—he is here, OK.

I should indicate to the panel in advance that I may well have to absent myself very shortly in defense of the Administration to handle some of the amendments that are being offered to the State Department bill, and I will absent myself at that point, and Mr. Bilbray will continue in the Chair when I have to go to the floor.

I regret that but I did not want to have to delay the hearing until another day, because I know that some of you have traveled a great distance.

I would also ask that the written testimony of all four of you will be placed in the record in their entirety, and I would ask that you summarize your statements as briefly as you can to provide us maximum time for some questions.

And we will again go by the lights there to try to keep you within the 5 minutes.

I'd like to first call upon Gail—well, she's not here.

Stanley Greenberg, the Associate Director of the Southern African Program at Yale University.

Dr. Greenberg.

**STATEMENT OF DR. STANLEY GREENBERG, ASSOCIATE  
DIRECTOR, SOUTHERN AFRICA PROGRAM, YALE UNIVERSITY**

Dr. GREENBERG. Thank you, Mr. Chairman.

I apologize for not having comments for you in advance, but they are now available for staff.

Let me read just briefly excerpts from my testimony.

I want to thank you for the opportunity to speak here today and provide expert, hopefully informed testimony on contemporary events in South Africa.

I last testified here almost 4 years ago in September, 1983, and told the committee that South Africa is changing. We are witnessing basic changes in the structure of racial domination. There is movement away from apartheid as we have known it and as black South Africans have experienced it.

I emphasized then that the so-called reform initiative was two-edged—positive and repressive elements that work together as the government sought new ways to insure white privilege. It was a contradictory course that was limited from the start that has produced some positive change in the lives of a few while producing untold misery for the great majority. It was a course that the government could not manage or control. This so-called reformist regime has slipped step by step away from classic apartheid into a crude and coercive state racism.

I hesitate to call this modernized apartheid or neo-apartheid, which some have called it, which suggests a design and reconstructed rationality. That characterization suggests a unity of purpose, a sense of direction and control of events which is inconsistent with the contemporary South African reality.

This is a government whose weak reform initiatives have been repudiated by three years successive states of emergency; that has barely survived the national election for whites; whose political base is severely fragmented; that has almost no vision for the future, save the military and police clampdowns on the townships and independent trade unions.

Reform now in South Africa includes new independent states, like Kwandebele; regional service councils and a national statutory council. The emphasis now is not on reform in a meaningful way, but on collaboration and patronage. This reconstructed apartheid has taken on a particularly crude form in this period: on the one side, a gripping repression over all independent black institutions; and on the other side, patronage for favored black allies who are willing to abandon independent action.

The election of May 1987 only underlined these essential trends. Security and repression won out within the state before the conservative party gains in the Transvaal which no doubt entrenches that course. The government during the election abandoned reform and future, to appeal in effect for white unity and the promise of security. For that, many thought the conservative party a more comfortable guardian.

The government sought a public mandate for the meekest form of reform and change: Discussion with government appointed African leaders in some unspecified advisory body.

One should not mistake this turn to security as evidence of effective government control over society and events. Indeed, the increasing preoccupation with security is but a measure of the government's disunity and inefficacy.

The election gave the National Party only 52 percent of the white vote. In the Transvaal, the more conservative Transvaal, the

found that sanctions have cost it support throughout black communities, which now blame the ANC for the unemployment resulting from sanctions.<sup>1</sup>

**Using Carrots.** For the short term, the Administration should make clear to Pretoria in the strongest possible terms its displeasure with any moves away from reform. The South African government should be encouraged to put its overwhelming election mandate to good use: with such a strong majority in the Parliament, the NP should move quickly to resume its reform program.

Over the longer term, the U.S. should begin to apply the lesson of sanctions against Pretoria: when dealing with Afrikaners, the carrot works better than the stick. Instead of threatening more sanctions against Pretoria if the government does not resume the reform process, the Administration should offer to make efforts to lift the sanctions already in place. Positive incentives, not negative, offer a more realistic hope of achieving the desired results in South Africa.

### PRE-SANCTIONS TRENDS: CRACKS IN THE WHITE SUPERSTRUCTURE

Contrary to the conventional wisdom, the struggle for power in South Africa is not simply between blacks and whites. Black South Africans themselves disagree over key questions, such as the best strategy for eliminating apartheid (violent or nonviolent?) and the best type of economic system to set up after they achieve power (socialist or capitalist?).

Nor is white South Africa united. At the most basic level is the split between whites of English descent (1.5 million) and Afrikaners (3 million). Traditionally, English-speaking whites, who dominate the financial and commercial fields, have been more open to racial change than Afrikaners, who have dominated the government and politics of the nation since 1948.

Even among the Afrikaners, divisions exist. Many Afrikaners in recent years have begun asking themselves if they can really hope to hold on much longer to a system that so clearly is changing. Two schools of thought have emerged over the question of how best to protect Afrikaner culture:

1) The "exclusionist" school, which argues that the "vulnerable" Afrikaner community should be "aggressively protective" of its language and culture, since all other elements in the society oppose it; and

2) The "inclusionist" school, which believes that Afrikaners have established themselves well enough to be confident of the future, and that the best way to protect their culture is "to allow others to be attracted to it."<sup>2</sup>

Key elements of the traditional governing coalition apparently have come to accept the inclusionist view. Among the elements of the governing coalition to have accommodated themselves to the new view:

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1. See Peter Youngusband, "South African Rebels Back Off on Sanctions," The Washington Times, June 2, 1987, p. 1A.

2. See Allister Sparks, "Afrikaner Group Seeks Out Blacks," The Washington Post, March 16, 1987, p. A1.

government barely gained the majority of the white conservative vote.

On the other side, Cape farmers and some prominent Afrikaner businessmen for the first time since World War II broke with the National Party to support independent candidates. Despite a facade of unity, some of the largest business federations and business organizations found themselves estranged from the government. Afrikaner intellectuals, many of whom played major roles in the reform commissions just 2 or 3 years ago, have too broken with the government.

The imposition of sanctions by the United States in 1986 has contributed positively to the process of change and the pursuit of American interests in South Africa. Since the early 1970's, the balance of power has steadily shifted to the African majority in South Africa, despite the increasing use of state violence to maintain control.

The Anti-Apartheid Act and the subsequent withdrawal of American corporations sent a clear signal to the white government and the majority public: first, that the United States would not applaud this white government until constructive policies promised genuine change; and second, that the American people stood with the African majority. That message has been received by both parties and has contributed to the continuing tilt in favor of majority rule.

The Committee should not put a great deal of stock in the hostile rhetoric and even the election results of May, as some repudiation of sanctions. The process associated with sanctions has accentuated the divisions within the white regime and exposed the limitations of reform strategies that amount to little more than buyoffs and patronage. It has given further confidence to independent movements that seek to transform the society. The process that brings an end to apartheid and to this state racism will take a long time, urged by American support for democratic elements in South African society. It requires a policy that is determined and patient, pursued with consistency and that keeps its eyes on the ultimate objective.

Thank you.

[Prepared statement of Dr. Greenberg follows:]

PREPARED STATEMENT OF STANLEY B. GREENBERG, ASSOCIATE DIRECTOR, SOUTHERN  
AFRICAN RESEARCH PROGRAM, YALE UNIVERSITY

I want to thank you for the opportunity to speak here today and to provide expert, hopefully informed testimony on contemporary events in South Africa. I last testified here almost 4 years ago, in September 1983, and told the Committee that "South Africa is changing. We are witnessing basic changes in the structures of racial domination. ... There is movement away from 'apartheid,' as we have known it and black South Africans have experienced it." I emphasized then that the so-called "reform" initiative was "two-edged" -- positive and repressive elements that work together as the government sought new ways to ensure white privilege.

It was a contradictory course that was limited from the start, that has produced some positive change in the lives of a few, while producing untold misery for the great majority; it was a course that the government could not manage or control. This so-called reformist regime has slipped step-by-step away from classic apartheid into a crude and coercive state racism.

I hesitate to call this modernized apartheid or neo-apartheid -- which suggests a design and reconstructed rationality. That characterization suggests a unity of purpose, a sense of direction and control of events which is inconsistent with the contemporary South African reality. This is a government whose weak reform initiatives have been repudiated by 3 years of

successive states of emergency, that has barely survived a national election for whites, whose political base has severely fragmented, that has almost no vision for the future, save the military and police clampdown on the townships and independent trade unions.

The reconstruction of apartheid began with heady rhetoric, extravagant promises, a kind of pace and confidence that suggested possibilities for change. Some in America, certainly this administration but even some social scientists, suggested that the Botha government might have the capacity to manage events and a transition to something more democratic. Those days are hard to remember, particularly since the military occupation of Sebokeng in October 1984. In the recent election, the National Party spoke only of "reform and security" -- a reform with almost no specific content but a security that was rich in caspars, new helicopters, expanded police and military units, security that was buttressed by growing security coordination and priorities within the state.

Reform now includes new "independent" states, like KwaNdebele, regional service councils and a national statutory council. The emphasis now is not on reform, in a meaningful way, but on collaboration and patronage. This reconstructed apartheid has taken on a particularly crude form in this period: on the one

side, a gripping repression over all independent black institutions in society, particularly the United Democratic Front (UDF) and the Congress of South African Trade Unions (COSATU), what the government calls, extra-parliamentary organizations; and on the other side, patronage for favored black allies who are willing to abandon independent action.

The days of free market ideology, a reduced state presence in society, pluralism, and protestations that apartheid is dead, the days of excited commissions looking ahead to some new ordering of the world, are gone. White society and the government are dispirited. There are no great plans in the drawer waiting to be pulled out. There is little serious talk of providing much needed land and new housing in the urban areas, little to suggest a commitment to freedom of movement, little will to drop down the barriers in Group Areas, no backing off "own affairs" as a constitutional principle, little interest in a national convention to invite full participation. There is barely room in this new era for the "Indaba," the minimalist reform proposals of the government's own created institutions.

The election of May 1987 only underlined these essential trends. Security and repression won out within the state before the Conservative Party gains in the Transvaal which no doubt entrenches that course. The government during the election

abandoned reform and future, to appeal, in effect, for white unity and the promise of security. For that, many thought the Conservative Party a more comfortable guardian. The government sought a public mandate for the meekest form of reform and change -- discussion with government appointed African leaders in some unspecified advisory body.

One should not mistake this turn to security as evidence of effective government control over society and events. Indeed, the increasing pre-occupation with security is but a measure of the government's disunity and inefficacy.

The election gave the National Party only 52 percent of the white vote. In the Transvaal, the largest province and industrial heartland of the country, the National Party took barely half (56 percent) of the conservative white electorate. National Party leaders, architects of the mild reform initiative, like the minister of Constitutional Development and the Transvaal leader, barely won re-election, and in Natal, anti-reformist, anti-Indaba Nationalists took over from a near extinct New Republic Party.

On the other side, Cape farmers and some prominent Afrikaner businessmen, for the first time since World War II, broke with the National Party to support independent candidates. Despite a facade of unity, some of the largest business federations and

business organizations find themselves estranged from the government. Afrikaner intellectuals, many of whom played major roles in the reform commissions just two or three years ago, have too broken with the government.

This government has a fragile base in white society. It offers security, but, frankly, it can deliver little else. Security in this context is a military and police presence, bannings and restrictions, detentions without trial and with torture, but that hardly represents effective control over events. The government has not been able to set the agenda or the pace for change; it has not been able to suppress a growing independent trade union movement and growing waves of strikes; it has not been able to control massive squatting and flight to the cities; it has not been able to govern the townships; it has not been able to impose order through coopted African clients or win African support for any of the proposed arrangements for society; it has not been able to build its legitimacy, either within or outside South Africa.

The imposition of sanctions by the United States in 1986 has contributed positively to the process of change and the pursuit of American interests in South Africa. Since the early 1970s, the balance of power has steadily shifted to the African majority in South Africa, despite the increasing use of state violence to

maintain control. The Anti-Apartheid Act and the subsequent withdrawal by American corporations sent a clear signal to the white government and the majority public: first, that the U.S. would not applaud this white government until constructive policies promised genuine change; and second that the American people stood with the African majority. That message has been received by both parties, and it has contributed to the continuing tilt in favor of majority rule.

The Committee should not put a great deal of stock in the hostile rhetoric and even the election results of May, as some repudiation of sanctions. The process associated with sanctions has accentuated the divisions within the white regime and exposed the limitations of reform strategies that amount to little more than buy-offs and patronage. It has given further confidence to independent movements that seek to transform the society. The process that brings an end to apartheid and to this state racism will take a long time, urged by American support for democratic elements in South African society. It requires a policy that is determined and patient, pursued with consistency and that keeps its eyes on the ultimate objective.

Mr. WOLPE. Thank you very much, Mr. Greenberg.

And let's just go down, and Professor Goldman, I'd like to call on you at this point.

**STATEMENT OF RONALD GOLDMAN, ASSOCIATE DEAN, COLLEGE OF COMMUNICATIONS, BOSTON UNIVERSITY**

Mr. GOLDMAN. Thank you, Mr. Chairman.

Just some very brief comments that I'd like to summarize.

There are various interpretations that have been made of this election. I'd like to mention some of them, from both white commentators, and political actors, particularly about the white political scene.

One view represented by Allister Sparks, for instance, argues that we have on our hands now indeed a bleak South African scenario for the future. That no real possibility exists for meaningful reform or discussion with credible black leaders. That prior to the election there was indeed the possibility or some hope among some participants in South Africa that a group to the left of the current government could in fact break away and perhaps align themselves with the Progressive Federal Party and form some real opposition and some motivation for change.

In Allister Spark's view, that eventuality is doomed. That the only thing we can look forward to in South Africa now is an increasing cycle of repression, violence, increasing international sanctions, followed by increasing violence until the country disintegrates.

This is a bleak view indeed, but it is one that is shared by a number of South Africans and others who look at the situation at the moment.

There are various disagreements with this particular interpretation that I would just like to mention briefly. One represented by Sampie Terblanche, the Afrikaner intellectual who has recently broken from the government, from influencing, really, the government, has argued that in fact the Nationalist Party will now be a paralyzed party, unable to act either in one direction or another.

And that what we will see in the foreseeable future is the breakup of this party, some members of it shifting to join the conservatives and others perhaps forming a new party around the nucleus of the breakaway independents to the left of the current government, whose essential position has been faster, more coherent reform with security.

Still others have argued that this election indeed is not what it appears to be, that is, a wholesale shift to the right, but rather in fact a shift to the left, as strange as that may sound at first glimpse.

Those arguing this position, for instance, Professor Larry Schlemmer, from the University of Witwatersrand, have said that if one were to judge by the 1981 by election results, one would have expected the conservatives in South Africa to have an increased vote than they actually did receive in this particular election.

Furthermore, he, Dr. Schlemmer and Professor Mark Swilling, of Political Science at the University of Witwatersrand, have argued that it is the government's move to the left that has really oc-

curred over the last few years, and that the voters have gone with them. This may not be a move to the left that we can much identify with, but in fact has occurred.

In fact, Dr. Connie Mulder of the Conservative party has agreed with this particular perspective, saying that the Conservatives have indeed remained where the government was in 1981, and it's the government that has gone left.

Now, these various points of view one must see in the context also of black leadership response to the election. All of it has been, to summarize it essentially, appalled at the results of the election. And I speak about the ANC who say that the results confirm that only violence can overthrow apartheid.

Or Dr. Boesak and Archbishop Tutu who say that South Africa has now entered its darkest era, and that there will be increased resistance politics. Gathsa Buthelezi who argues that the politics of negotiation is now more endangered than ever.

Whatever point of view one takes, I think the most dismal fact that we have to face in the United States is the depth of the impasse faced in South Africa. If the government moves one direction, in the direction of reform too quickly, it suffers from the right. If it represses too firmly without a program of reform, it suffers from the left.

It seems unable to act. There seems to be no plan on the table that will bring South Africans together.

One fact, however, for those—and this will conclude my remarks—I think that is critical for those who've spent some time talking and listening to South Africans, and that is that there's a tremendous hunger for a solution. And what we must attempt to face and try to support in South Africa are those plans that have been placed on the table that indeed do win, do capture the imagination of white and black South Africans across the political spectrum. And some of them do exist.

One outstanding example, of course, is the Indaba.

Two litmus tests for governments willing to reform exist in the very near future and we can watch them to judge what will happen. One will be whether its response to group areas legislation. The signs are that the crackdown will be considerable. A second will be its response to Indaba. That remains somewhat in the balance.

Thank you. I'll complete my remarks there.

[Prepared statement of Professor Goldman follows:]

PREPARED STATEMENT OF RONALD GOLDMAN, ASSOCIATE DEAN, COLLEGE OF  
COMMUNICATION, BOSTON UNIVERSITY

The recent election in South Africa and the various reactions to it provides us with a framework within which to analyze the state of black and white South African politics today.

Background

Prior to this election the ruling Nationalist Party (NP) could always count on the overwhelming support of the Afrikaans speaking electorate. It guaranteed not only that the Nationalists would easily win the election but also that the party would set a clear course: the implementation of apartheid policies. However, for the past few years the Nationalists have been engaging in what they have called reform. Most of the the black opposition has referred to these reforms as window dressing.

However, a number of Afrikaners have thought differently, so much so that they have been willing to sacrifice a much treasured Afrikaner unity to combat what they see as a government policy leading to national suicide for the Afrikaner people. In 1982 the President of South Africa, P.W. Botha spoke of his intention to promote what he called "healthy power sharing" with blacks. This was the trigger that provoked sixteen sitting members of parliament to abandon the Nationalist party to establish the breakaway Conservative Party (CP).

## The Church

Afrikaners long have viewed themselves as one of God's chosen people, a group of modern-day Israelites. The Nederduitse Gereformeerde Kerk [NGK, the Dutch Reformed Church] has supplied the theological underpinning to apartheid. Over the last 12 years, however, the church has changed significantly. In 1974 it backed away from its traditional affirmation that apartheid was specifically blessed by Scripture, to a somewhat weaker position declaring only that apartheid was not contrary to Scripture. Throughout the early 1980s a growing number of NGK ministers urged the church to reexamine its justification of apartheid. Last October, the church synod elected the liberal Johan Heyns as moderator, and declared that "The Dutch Reformed Church is convinced that the application of apartheid as a political and social system which injures people and unjustly benefits one group above another cannot be accepted on Christian ethical grounds since it conflicts with the principle of neighborly love and righteousness."<sup>3</sup>

Rejected by the church, apartheid cannot long last in the rigidly Calvinist South African society.

## The Intelligentsia

Apartheid is not only a system for white control, it is an ideology. As such, it needs an intellectual as well as theological justification. Historically, the University of Stellenbosch, outside Cape Town, has served as apartheid's "brain-trust," contributing the philosophical defense of apartheid. It is the oldest Afrikaans-language university in South Africa; six of the nation's eight Prime Ministers were graduates. State President P.W. Botha currently serves as the chancellor of Stellenbosch.

Stellenbosch has witnessed fundamental changes in the past several years, culminating in March, when 27 leading Stellenbosch professors, including Sampie Terreblanche, one of the State President's closest advisers, resigned from the National Party and issued a declaration demanding the elimination of all remaining discriminatory laws.<sup>4</sup> Calling themselves the "Discussion Group 85," they also demanded that Pretoria declare its "unambiguous intent" to share power effectively with blacks.<sup>5</sup> The 27 were soon joined by over 300 other members of the faculty (out of a total of 700), who signed the declaration to demonstrate that the protest was in fact widespread.

**Protesting Students.** Protest against government policies has spread throughout the student body at Stellenbosch. By mid-1986 a student organization protesting conscription had been established there. Protests also have taken place at several other universities. Most recently, at the University of Cape Town, ten students were injured on April 27th

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3. See "Dutch Reformed Synod Denounces Apartheid," in Foreign Broadcast Information Service-Middle East and Africa [hereinafter referred to as FBIS-MEA] October 23, 1986, p. U10. See also "Johan Heyns and the NGK's Change of Heart," interview with Johan Heyns, in *Leadership* magazine, Vol. 5, No. 5, 1986, pp. 46-50.

4. Some sanctioneers may point to the break in March--that is, six months after the imposition of sanctions--as evidence that sanctions have had a positive effect. Professor Terreblanche himself rejected that notion when asked, calling sanctions "disastrous for the whole process of reform in South Africa." Conversation with Terreblanche, Washington, D.C., May 21, 1987.

5. See "Academics Ask Government To Declare Reform Intent," in FBIS-MEA, March 9, 1987, pp. U5-6. See also Bruce W. Nelan, "Rocking the Cradle of the Volk," in *Time*, May 4, 1987, p. 38.

The ruling Nationalists seemed able to please no one. From the left wing of their party (the so-called verligte or enlightened wing) they were accused of not moving fast enough with a reform program. The international community decided to impose sanctions with the United States Congress leading the way. Black resistance could not be appeased and no credible Black leaders were willing to enter negotiations about a new political dispensation under the government's terms.

When plans for a May 7 election were announced the leaders of the then official opposition, the Progressive Federal Party, PFP ( a party that has consistently promoted a policy of negotiation with all black opposition groups to establish a multi-racial South Africa), believed that they had a chance to gain ground on the Nationalists. This hope was given sustenance when three Nationalists--the Independents as they came to be called-- broke to the left of the government to challenge them on the grounds of their failure to reform quickly enough. The CP, on the other hand, merely hoped to prove that they could win some seats. They ran on a platform that proclaimed the absolute necessity for partition of nations since, they argued, reform would lead inevitably to revolution and finally to black domination in a unitary state, heralding the end of the Afrikaner people as an identifiable culture and nation.

#### The May 6 election

The election was held on May 6, 1967. The results deeply depressed some; others reacted stoically, while others claimed that their original analyses and strategies were confirmed.

Before explaining these varied responses let us first examine the elementary facts about the results of the election. Only whites voted and they voted in considerable numbers. The most noticeable result and the one that has received most attention is that the new official opposition is now the Conservative Party , a party that stands to the right of the Nationalist Party . The Progressive Federal Party lost seats to the Nationalists with the result that the Nationalists actually obtained an increased number of seats, and appear to be more firmly ensconced in power than ever. What is more striking about this election is that so many Afrikaners chose not to vote for the Nationalist Party. Nearly 45 % of the Afrikaner vote --or about 600,000 votes-- went to the Conservative

Party, whereas the National Party obtained only about 50% of the Afrikaans vote. To anyone who has followed South African politics for any length of time, this is an astounding and sobering phenomenon. In 1981 the National Party obtained--in fact was assured of-- 90% of the Afrikaans-speaking vote. Most observers are convinced that the Conservatives' vote getting power has peaked, even though they may well gain a considerable number of additional seats in a future election.

In my view, however, this is an overly optimistic assessment. There is reason to believe that under certain circumstances there could occur a major swing toward the Conservative Party. These circumstances include a decision by the government to release Nelson Mandela or a decision to recognize the banned African National Congress (ANC), now in exile in Zambia, and which promotes a policy of violence-- the only way to overthrow apartheid, as far as the ANC is concerned. Thus, the phenomenal speed with which the Conservatives have risen to their position as official opposition indicates that they will play a powerful role in preventing any dramatic reformist moves by the government.

In addition to this break away of Afrikaans-speaking support on the right, perhaps for the first time in South African history a significant number of Afrikaners voted for a group of candidates who had broken to the left of the Nationalist party. The Independents, who called for faster reform without compromising security, won only one seat but showed that they were able to attract support among voters. Finally, again for the first time in the history of South African politics, a significant number of English-speakers (about 56% ) cast their votes for the Nationalists.

Interpretation of the meaning of this election among both commentators and political actors has varied widely. However, there was general agreement about some points: 1). The white electorate's vote indicated the degree to which fear was the prime motivator. The one party that did not take a strong position on the "law and order" issue--the Progressive Federal Party--suffered severely for it. Clearly, the white electorate wanted a government that would not hesitate to use the

power of the state to ensure public order. If a protracted state of emergency was necessary for this to occur, then so be it. 2). The future of the Progressive Federal Party in its current form was thrown into doubt. For a while it will continue as is, but the chances are that some considerable realignment among those to the left of the government is going to take place.

Reaction to and interpretation of the election with regard to other aspects varied considerably. On one end are those who see this election as the death knell of any hope for a relatively peaceful movement toward a new political dispensation in South Africa. The South African journalist, Allister Sparks, an articulate representative of this view, argues that white South Africans indicate that they have now chosen the path adopted by Ian Smith. (Washington Post, May 10, 1987.) According to Sparks, white voters have revealed a determination to close ranks against black opposition and a determination to use the extensive power of the state to shut down black protest. Prior to the election there were some reason to hope that movement toward a negotiated settlement could occur. The possibility existed that the *verligtes* and some coalition of Progressives and break away Nationalists (Independents) would increase their power. This would have given real hope to those looking toward a time when negotiations among all parties in South Africa could begin. Such possibility, according to Sparks, no longer exists. The Progressives have failed; the breakaway Nationalists and Afrikaner intellectuals have now left the Nationalist party and can no longer influence it from within. Reform tendencies within the party have thus been weakened beyond repair. P.W. Botha and his successor, (most likely F.W. De Klerk), will be mainly concerned about looking over their right shoulder, and far less concerned with what is happening on their left. Expect a worsening cycle of repression, violence, increased repression and harsher sanctions from the international community--a slow, but inevitable disintegration of the country.

This bleak view is countered by the analysis that points to the fact that for the first time the Nationalist party is not a tribal party. For the first time it has a significant constituency of English speakers and that its election platform--"reform through strength"--means precisely that: reform as well as the exercise of strength. Unless the NP fulfills this obligation to the electorate it will lose

support on the left to a newly constituted party which will be formed around the nucleus of the break away Independents. The Independents have called for a coherent and faster reform program, including consultation with all black groups while maintaining tight control over the security situation.

The respected Afrikaans intellectual, Sampie Terblanche, wrote as follows after the election: "The disintegration of the [national party] into several parts is no longer as far-fetched or remote as may have been the case before the election. Such disintegration of the NP will open the way for an alternative and truly reform-oriented government. This possibility offers the only hope for a parliamentary solution to the South African problem." (Sunday Times-South Africa-May 17, 1987).

Some observers go further than this to argue that the election results should be interpreted as a genuine shift to the left rather than to the right. For example, Professor Lawrence Schlemmer, Director of the Centre For Policy Studies at the University of Witwatersrand, argues that judging by the 1981 electoral results the Conservative party should have won more seats than they did in fact win in this election. Unrest prior to the election, talk of powerful response by the CP and NP, caused many voters to opt for the apparent security offered by the National Party. Schlemmer argues further that renewed self confidence engendered by their massive victory will cause the Nationalists to display far greater boldness in implementing their mandate for reform.

Mark Swilling, Professor of Political Science at the University of Witwatersrand, agrees that there has been a move to the left but provides different reasons. He argues that the CP policies of 1987 are virtually identical to those of the NP in 1981. The NP has shifted from its positions in 1981 and now envisions black representation on the local, regional and national level, albeit on their own terms. (Actually, this point of view is identical to that put forth by the Conservative Party itself. Dr. Connie Mulder, a powerful figure in the Conservative party, said: "We are not radical. The National Party has moved so far left that we seem far right to them." New York Times, May 21, 1987.) Those who criticize this argument point out that so-called reform policies planned by the

to be acceptable to any but a very few black people--that until such time that reform includes significant black support it will never get off the ground. Debate about how to achieve wider black support will be taking place within National Party caucuses. The results will have great significance for the future of South African politics.

Two litmus tests exist of the strength of the reform wing in the Nationalist Party: one is the question of what the government will do with regard to group areas legislation (that legislation that makes it illegal for blacks and whites to live in the same residential area). It is clear that debate rages within the NP about whether to implement a major crackdown intended to close all the cracks in group areas that have appeared, or to only make a show of closing them to appease the right wing or, finally, whether to allow local areas the option of implementing their own solutions.

The second litmus test will be the government's response to the Indaba proposal to establish an entity called Kwa Natal that would allow for a multi-racial political arrangement in one region of the country. Indaba is the name given to the extensive negotiations that have taken place among groups of all races from the two adjacent areas, Natal and Kwa Zulu. The result of these negotiations has been agreement about a constitutional plan that would allow the two areas to be joined, to form KwaNatal, with all races voting for legislators that would represent them in a political arrangement intended to protect the civil rights of individuals as well as the concerns of groups and cultures. Neither radical right wing groups, nor the black opposition groups -- UDF (really the internal wing of the ANC), COSATU (the trade union most clearly aligned with the ANC), or the ANC -- participated in the negotiations even though they were all invited to do so. The Nationalist Party only sent observers since they were to make the final judgement on the merits of the Indaba. Although their party chief in Natal said that the agreement was not satisfactory there has been no official government decision as yet. There is little clear sign about what the government may do, indicating again that considerable debate must be taking place within government circles, making it unlikely that there will be a positive response for some time, if ever.

Wimpie de Klerk, former editor of the Afrikaans newspaper, Rapport, who was unseated from his job because he was too verlig, made the following assessment of the structure of the post election Nationalist party: 18% were right-wingers, 22% verligtes and the remaining 60% were stuck in the middle. I think we can glean from that assessment just how little we might expect from the Nationalist party in the next two years other than greater repression. It also indicates the reasons why, for all the parliamentary seats it has won, the Nationalist party will not be able to lead the country in any clear direction. Furthermore, we get an indication of how fraught is the immediate future and how easily South Africa may head in a number of alternative directions. Recognition of this fact requires that those interested in promoting democracy in South Africa such as the United States Congress should approach their task with extraordinary subtlety.

It is important to mention the issue of sanctions and their meaning in South African affairs today. Again, as one might expect two divergent readings of the effect of sanctions on the South African electorate have emerged. Anthony Sampson, the British author who has recently written about South Africa, argues that the white electorate is far from solid in its support of P.W. Botha and that in fact this white electorate will bring pressure on the government to rejoin the international community. Although sanctions do not yet bite, "the West has at last spelled out to the younger generation that it is backing words with deeds and that the whites can no longer enjoy both apartheid and expanding economic horizons." (New York Times, May 8, 1987.) In other words, Sampson agrees with those who argue that behind the apparent shift to the right lies a very unstable support for Botha--one that really is waiting for him to move left. If he does not, he will lose support to those calling for faster reform. This leads Sampson to say: "Westerners who have South Africa's true interests at heart should continue to press for sanctions while keeping open the prospect of genuine negotiations with the black opposition." At the same time he forcefully opposes disinvestment saying that withdrawal of Western business and capital will hurt black people.

The argument that sanctions has made it more difficult for moderates in South Africa is more compelling, in my view. Sampson forgets the considerable extent of anti-capitalist, anti-western sentiment that seethes under the surface among a sizeable number of Afrikaners. Botha campaigned heavily on the theme that he would not let America dictate to him his timetable for reform. He was criticized heavily by the right for the degree to which he has allowed outsiders to tamper with South African affairs. Most of those who support the Conservative Party would be hurt by effective sanctions. Yet, they are the most vociferous in their objections about reform.

The Wall Street Journal has made precisely this argument. It points to the fact that Botha was progressing along a reformist path and that sanctions made it more difficult for him to proceed because he was being charged on his right with trying to appease foreign interests. The Journal writes: "The U.S. has gained nothing from sanctions and disinvestment, which have served the cause of those who are promoting radical solutions more than the efforts of those who are seeking peaceful reform." (Wall Street Journal, May 13, 1987).

Alan Paton, author of Cry The Beloved Country, the book that first brought the horror of apartheid to the attention of the world, is in complete agreement with this analysis. He argues that the move to the right in this election was caused by, on the one hand, the fear engendered in the white electorate by the ANC, UDF and COSATU. Paton goes on to say: "A second and lesser reason was the ill-advised sanctions campaign of the West. It may be possible to lead Afrikaner Nationalists but it is impossible to coerce them. The West and particularly the United States Congress has made a grave error, it has undertaken a course of action the results of which it cannot foresee." (Sunday Times, South Africa, May 17, 1987).

Alan Paton accurately describes Afrikaner reaction to the coercive intent underlying the sanctions campaign. In my view this campaign has made the chances for genuine reform toward a democratic South Africa qualitatively more difficult than it ever was. This sanctions campaign will almost inevitably grow in strength, and in the process will contribute to weakening the possibilities for genuine reform. Moreover, it will hurt many black people severely --black people who have

never been consulted about their willingness to endure the kind of suffering we Americans are systematically setting out to impose upon them. We undertake this action at no cost to us, I might add.

Alan Paton's analysis of the meaning of the election is so astute I will conclude this section on white political reaction to the election by quoting at length from him:

Reform and security run like two contrary tides in the same sea. White South Africa--with the exception of the CP--is more convinced of the need for social and political change, but would rather trust the NP than the PFP to bring it about.

Therefore the next two years will bring nothing spectacular in the social and political sphere. We shall do nothing much to please the West, who, in the mistaken belief that ruined economy will lead by some kind of miracle to an African Utopia, will no doubt tighten the grip on sanctions.

Will the Afrikaner having struggled so long with the blacks and the British, now win the struggle with himself, or will he throw it all away? The answer to that question is the answer to the future of our country. (Sunday Times, May 17, 1987)

#### Reaction to the Election from Black Political Groups

We come now to a far briefer discussion of the black political reaction to the election--briefer because there is more similarity than difference among black leaders who have responded publicly.

However, the differences that are to be gleaned also provide us with an understanding of the strategies that will be employed by different black groupings in South Africa in the future.

Oliver Tambo, President of the ANC summed up the ANC response succinctly: "The election blew the whistle for the ANC to continue the struggle in exile." (New York Times, May 8, 1987).

Archbishop Tutu said: "We have entered the dark ages in the history of our country." Dr. Boesak said, "As far as blacks are concerned the white community has made a clear choice for apartheid and oppression." Chief Minister of Kwa Zulu Gathsa Buthelezi said that he was "utterly appalled" at the results of the election and that it has "all but destroyed prospects for negotiation."

These statements and others made by Black leaders indicate that basically three forms of black anti-apartheid strategy and tactics will be pursued for the foreseeable future: 1). The strategy of

violent action directed by the ANC in exile will continue. 2). The strategy of resistance-- mass actions, such as protest strikes and rallies including a stepped up passive resistance campaign directed largely by UDF and probably COSATU-- will continue. 3). The politics of negotiation--an effort to seek political agreement on a regional basis (The Indaba Proposal is the outstanding example), while continuing to seek national solutions-- will continue.

It is difficult to gain a clear assessment about the state of these three strategies. It seems that the level of violence has decreased over the past twelve months, with occasional striking exceptions. There also seem to be some signals from ANC sources that they are reassessing their ideas regarding the vulnerability of the State, although their public literature continues to speak of victory being around the corner.

The state of resistance politics is also hard to assess, particularly because of the restriction on information resulting from the state of emergency which is in force in South Africa. It is also hard to assess what the result of resistance politics to date has been. Clearly it has mobilized many people, perhaps raised the hopes of many people that success is not too far away. Also, following efforts by the government to initiate a reform process, resistance politics has managed to provoke the government to establish the harshest state of emergency legislation in the history of South Africa. Although this has slowed resistance politics, it has failed to stamp it out. Perhaps it is an achievement of resistance politics that it has managed to elicit sympathy from the international community, although, as has been pointed out, the form in which this sympathy has been expressed is of dubious benefit to black people in South Africa. It is also essential to note that one consequence of resistance politics and of the ANC strategy has been severe black on black violence that continues to rage and that could eventually lead to civil war among black people.

Finally, we come to the state of affairs with regard to the Indaba, which some have called the only reasonably bright hope on the horizon. The proposal formulated under the Indaba is for multi-racial politics to become an actuality in the region of Natal/Kwa Zulu. If this were to occur it could offer a model for other regions in South Africa to follow. Many groups in the region were

involved in negotiations, although the NP, CP, ANC, UDF did not participate. Whether it will be possible to implement the proposal hangs in the balance. The fact that such an idea is so extraordinarily difficult to implement gives an indication of the vast distance South Africans still have to travel before anything resembling a national solution agreeable to all groups will be formulated. Given this basic fact, those that hope to encourage a future South Africa that is free, prosperous and offers dignity for all who live there ought to reconsider the advisability of the decision we are making to bludgeon South Africa until it changes. Instead, we ought to consider how to encourage those that seek negotiated settlement.

Almost certainly, South Africans are going to have to invent a political solution unique to their own circumstances. Americans ought to offer maximum support to those who are offering proposals that might allow South Africa to emerge from the impasse in which it finds itself, however incremental such solutions may seem from our perspective. The Indaba is one such example, and others may be quick to follow if the Kwa/Natal experiment can show success.

when police fired birdshot into a group of 300 students protesting a cross-border raid into Zambia.<sup>6</sup> And police arrested 120 students on May 4 at the University of Witwatersrand, in Johannesburg, when the students refused to disperse after a student meeting was declared illegal.

### The Secret Society

Founded in 1918, the Broederbond ("Brotherhood" in Afrikaans) originally was established as a secret society to help Afrikaners find jobs. Since then, the organization has grown in size and influence: it boasts a membership of 12,000 and includes the vast majority of Afrikaners in government, media, academic, and church leadership positions. To conspiracy-minded observers, the Broederbond is the ultimate refuge of "the Super-Afrikaners." It serves the National Party as a ready-reference sounding board of Afrikaner opinion: in several cases, pending NP decisions secretly have been circulated throughout the Broederbond to ascertain Afrikaner reactions.

The Broederbond, though broadly representative of Afrikaner opinion, has had its divisions as well. In 1969, the organization splintered following the break-away from the National Party by die-hard apartheid supporters who formed the Herstigte Nasionale Party (HNP). This episode was repeated in 1982, when another group of parliamentarians, led by former Broederbond Chairman Dr. Andries Treurnicht, left the National Party to form the Conservative Party.

**Meeting with Blacks.** More recently, attention was focused on the Broederbond when it was discovered that it had circulated a document to its members advocating negotiations between the government and major black opposition groups. Current Broederbond Chairman Pieter J. De Lange met with top African National Congress leaders in New York last June and arranged a meeting between 30 black radical youths from Soweto and 30 white youths. Such ferment within the previously monolithic Broederbond is evidence of serious change within the Afrikaner leadership caste.

### The Politicians

Since their electoral victory in 1948, the Afrikaners, through the National Party, have ruled South Africa without serious challenge. As recently as 1977, some 83 percent of the Afrikaner population supported the NP.<sup>10</sup> Through the early 1980s, however, the NP, led by P.W. Botha, moved to abolish the more obnoxious elements of apartheid. Following the 1982 announcement of its reform program, 16 die-hard pro-apartheid parliamentarians broke away to form the Conservative Party. The NP continued to move toward reform,

6. See "Cape Town Students, Police Clash During March," FBIS-MEA, April 28, 1987, pp. U3-4.

7. See "Police Break Up Witwatersrand Student Meeting," in FBIS-MEA, May 5, 1987, pp. U3-5.

8. See Ivor Wilkins and Hans Strydom, The Super-Afrikaners: Inside the Afrikaner Broederbond, (Johannesburg: Jonathan Ball Publishers, 1978). The book is based on 15 years' worth of confidential Broederbond documents handed over by a disaffected Broederbond member to reporters of the Johannesburg Sunday Times.

9. See Allister Sparks, "Afrikaner Group Seeks Out Blacks: Leader of Key Secret Society Describes Meeting with ANC," The Washington Post, March 16, 1987, p. A1.

10. See N. Brian Winchester, "Republic of South Africa," in George E. Delury, ed., World Encyclopedia of Political Systems and Parties, Vol. II, Nepal-Zimbabwe (New York: Facts on File, Inc., 1983), p. 915.

Mr. WOLPE. Thank you very much, Professor Goldman.

And now we turn to Professor Gail Gerhart, a Professor of Columbia University.

**STATEMENT OF GAIL GERHART, PROFESSOR, COLUMBIA UNIVERSITY**

Ms. GERHART. Thank you, Mr. Chairman.

You have asked me to discuss the most important recent trends in black politics covering the period of the State of Emergency which began last June.

What I would like to do is summarize six such trends, outline each one briefly, and then leave details, if there are questions, for later.

The first trend to which many other people here today have already referred is the tendency of the South African Government to employ ever harsher repressive measures to silence political dissent. Never before in South Africa have there been so many detentions without trial, such harsh and pervasive censorship, so much use of naked force and intimidation as we've witnessed since the imposition of the State of Emergency last June 1986.

Violence by members of the military and the police have been used to silence critics of the government not only in large urban centers but even in small towns and rural communities. Police-supported vigilantes have attacked government opponents. In April the headquarters of the largest black trade union federation COSATU, was reduced to a rubble by government agents who came in, smashed typewriters, threw the contents of filing cabinets out windows, and generally went on the offensive against the trade union movement.

From reports that are being compiled by people monitoring prison conditions, the use of torture against detainees, including children, appears to continue unabated.

On the more subtle side, the government has begun to use legislation at its disposal to restrict the ability of extra parliamentary organizations to receive funds from overseas, and COSATU anticipates that very soon they too will be declared a so-called affected organization, which will make it impossible for them to receive funds from outside the country.

I don't know anyone who is optimistic that the climate of fear and repression will ease in the near future, and in fact as one South Africa watcher put it, it's always darkest just before it gets pitch black. That's the prevailing outlook in terms of government repression.

A second trend which, like the first one, is fairly self-evident for South Africa watchers, has been the tendency for black extraparliamentary opposition groups to go into a period of tactical retreat. Now, this retreat is only partial because there have still been a great number of activities during this state of emergency that represent progress on the part of black organizations. There have been new political groupings, most recently the formation of SAYCO, the South African Youth Congress, a huge youth federation that was formed just about ten weeks ago. There was a successful two-day work stoppage that marked the May 6 election. But overall,

the past year has taken a very heavy toll on African political activists and their allies. Several hundred people have died, some 25,000 have been detained, and many more have had their homes bombed or attacked.

Popular support for rent boycotts has been sustained in almost 50 communities but other kinds of boycotts, consumer boycotts, school boycotts, and other types of protest actions have tended to decrease or peter out over the last year.

Street committees which were formed at the height of the revolt that erupted in late 1984 have continued to exist, but their level of activity has declined in the last year.

Mr. WOLPE. Professor Gerhart, I'm going to have to interrupt at this point. We'll have to recess for a few minutes to catch this vote. We already missed one today, and we don't want to do that again.

And then either I or Mr. Bilbray will return to resume the hearing in just a few minutes.

[Brief recess is taken.]

Mr. BILBRAY. Will Gail Gerhart please continue.

Thank you.

Ms. GERHART. Thank you. Let me resume with my summary of the second trend that I was identifying, namely what I've called the tactical retreat of black organizations.

It's my feeling that for most of these organizations, including the 600 or so that are affiliated to the United Democratic Front, the period ahead is likely to be one of consolidation and defensive action, and perhaps a lull in activism, while members prepare for the next round of confrontation, and accustom themselves to operating in an increasingly clandestine manner. I think this is a clear trend within black organizations generally.

Historically, such periods of lull in political activity have punctuated the African nationalist struggle in South Africa, alternating with periods of open resistance and revolt. And I see every reason to think that this is the pattern that will continue in the future. The only change is that the periods of lull tend to become shorter. Over the course of the twentieth century, each lull has been shorter, and the rebellion and revolt have come after a briefer period of quiescence.

A third trend in black politics is toward a growing solidarity between organized labor, youth and student groups and township-based civic organizations. Increasingly over the past year, groups of all these types have engaged in joint campaigns and joint planning. And the tendency for the large majority of the groups has been to line up behind the symbols and policy positions of the banned African National Congress.

I'm referring here mainly to the affiliates of the United Democratic Front and of COSATU which dominate, respectively, the areas of youth and community organizations and the labor field. Not all of the affiliates of these two movements see eye to eye on every issue. And there is also a range of black political organizations which are not oriented towards the ANC, but the broad tendency has clearly been toward a coalescing of support behind the traditions and symbols associated with that veteran nationalist organization, the ANC.

In some measure, I think this is due to the stepped up efforts of the government to paint the ANC as its principal adversary, and that's an approach which has the unintended effect of attracting lots of African admiration to any organization that is thus designated by the government.

A fourth trend is the growing politicization of the labor movement. Since the government extended recognition to African unions in 1979, the labor movement has grown at tremendous speed with approximately 20 percent of the black labor force now unionized.

Contrary to the government's intention once again, which in this case was that black unions should concern themselves solely with bread and butter issues, many black workers have recognized that the root cause of their grievances is political and they have thrown their weight behind politically inspired protest actions, stay-at-homes, things like the May Day strike of 1986, and the election protests on the 5th and 6th of May this year.

The rapid politicization of the labor movement also helps to account for the endorsement of American sanctions by most of the black union organizations, something alluded to earlier here this afternoon, in spite of the fact that union leaders and spokesmen recognize that sanctions will impose a cost on black as well as white in South Africa. The argument always made, and the Chairman earlier alluded to this, is that Africans and virtually all representatives speaking on their behalf, have emphasized that Africans are prepared to pay a short term cost for a long term benefit, and that this is the context in which they see American sanctions.

And this is testimony to what I have called the politicization of the labor movement, that you can have labor leaders who actually call for sanctions that are going to hurt their very constituents, the constituents of their organizations.

A fifth trend much in evidence over the course of the 1980s, but still continuing, is the leftward drift in ideological thinking among black political activists. The capitalist system, both in its South African manifestations and in general, is very broadly criticized by blacks. Not only by students and intellectuals, but also by clergymen and even by black businessmen.

Just last week, I was told by a representative of the National African Federated Chambers of Commerce that black shop owners who had had their premises attacked by radical comrades actually probably deserved what they got because of their socially irresponsible attitudes which they had learned from western style capitalism. I found that an incredible statement from a representative of black business.

In any case, part of this leftward trend in black thinking is also manifested in a strong and growing anti-American sentiment. The current U.S. Administration is widely perceived as being allied to the Botha government.

Last summer, in 1986, there was an opinion survey conducted by Dr. David Hirschman of the American University here in Washington that found strong antagonism towards the United States, both among young and old, and among conservatively inclined professionals, as well as militant activists. The surest way to get applause

at a mass meeting of blacks in South Africa, Dr. Hirschman was told, was to attack the United States.

Hirschman is going back to South Africa this summer. He's going to do a follow-up study and presumably he will test to see if the Anti-Apartheid Act of 1986 has made any dent in this negative perception of the United States and its intentions, and we'll see what his findings are in a few months time.

But obviously, this is a tendency or a trend among blacks in South Africa that ought to be of deep concern to the United States.

Sixth and lastly, an important trend that should be noted, I believe, is the ongoing reluctance of the African National Congress to turn to terrorist tactics in its struggle to unseat the South African regime. We're hearing an increasingly shrill and concerted chorus of propaganda attacks on the ANC, both from Pretoria and from conservative elements in this country, trying to foster a public image of the ANC as a bloodthirsty, terrorist movement, master-minded from Moscow.

And I think we can expect this campaign of disinformation to intensify as the ANC makes gradual headway in its political and military campaigns.

The reality, however, is that the ANC is continuing to exercise very great restraint in its choice of weapons against the South African regime. It's true that lapses have occurred and that a small number of civilians have died as a result of guerrilla action, but the policy of the ANC continues to be to attack only military targets and military personnel security personnel, and others clearly allied in a symbolic way with the apartheid state.

This restraint has been maintained in the face of very intense pressure from younger militants within the ANC who favor an eye-for-an-eye kind of policy. The restraint has been maintained because of the commitment of the ANC's current leadership to avoid mass bloodshed for as long as possible.

Strategically, on their part, it's part of a wider effort to win allies from amongst South Africa's embattled white population. It's a policy which almost certainly cannot be maintained indefinitely, and most observers, myself included, believe that it's a policy which can't survive the passing of the current generation of elder statesmen in the ANC's exile leadership. So this puts a time frame on all of our discussions of how to relate to the black struggle in South Africa. The more time that goes by, the more likely it becomes that a radical and unrestrained violent-minded generation of younger leaders will come into positions of authority in the ANC, and that racial polarization will rapidly intensify when that occurs.

Thank you, Mr. Chairman.

[Prepared statement of Ms. Gerhart follows:]

PREPARED STATEMENT OF GAIL M. GERHART, Department of Political Science, Columbia University,

Thank you, Mr. Chairman, for inviting me to testify today regarding the current situation of black political organizations in South Africa. The 16th of June is the day which marked the start of the Soweto uprising of 1976, and today is therefore quite a fitting time to try to take stock of the political balance of forces in that unhappy country. Eleven years and a number of historic political milestones have passed since the Soweto uprising, but in some ways the South African problem seems as intractable as ever.

You have asked me to discuss the most important recent trends in black politics, covering the period of the state of emergency which began a year ago. I'm going to identify six such trends, and outline each one briefly, leaving further details to the question time if members of the Committee would like more elaboration.

The first trend, to which Professor Greenberg has referred, is the tendency of the South African government to employ ever harsher repressive measures to silence political dissent. Never before in South Africa have there been so many detentions without trial, such pervasive censorship, so much use of naked force and intimidation as we have witnessed since the imposition of the second state of emergency on June 11, 1986. Violence by members of the military and police has been used to silence critics of the government in large urban centers, but also for the first time in many small towns and rural communities. Police-supported vigilantes have attacked government opponents, and in April the headquarters of the largest black trade union federation was firebombed and reduced to rubble by government agents who emptied the contents of file cabinets out the windows and used sledgehammers to smash typewriters and furniture. From reports compiled by agencies monitoring prison conditions, the use of torture against detainees, including teenagers, appears to continue unabated. On the more subtle side, the government has begun to use legislation at its disposal to restrict the ability of extraparliamentary organizations to receive funds from overseas donors. This is a weapon likely to be used more in the future, for example against COSATU, which is expecting to be declared a so-called "affected organization", meaning it may not receive funds from outside the country. I don't know anyone who is

optimistic that the climate of fear and repression will ease in the near future. As one South Africa watcher put it, "it's always darkest just before it gets pitch black."

As Professor Greenberg has suggested, the aim of the government's tough tactics is to crush black opposition forces so thoroughly that the way will then be clear for implementation of the National Party's own plan of reform, which features the cooptation of accommodating black leadership into a new federal or confederal system which will leave white power and privilege essentially intact.

A second trend, which like the first one is fairly self-evident to South Africa watchers, has been for black extraparliamentary opposition groups to go into a period of tactical retreat. This retreat is only partial, because there has still been a great deal of organizational activity during the period of the second emergency: new political groupings have been formed during the past year, for example SAYCO, a huge federation of youth organizations, which was born just about ten weeks ago. A successful two-day work stoppage marked the week of the May 6 white election. But over all, the past year has taken a heavy toll on political activists. Several hundred have died, some 25,000 have been detained, and many have had their homes attacked. Popular support for rent boycotts has been sustained in nearly 50 communities, but consumer boycotts, which were a major focus of black mobilization in 1985, have largely petered out. School boycotts have been suspended in most areas. "People's courts", which helped to fill the vacuum left by the collapse of government-sponsored local authorities in some townships of the eastern Cape and Transvaal, have stopped operating. Street committees, formed at the height of the revolt that erupted in late 1984, are today still widely in existence, but less active. For most black organizations, including the 700 or so affiliated to the United Democratic Front, the period ahead may be one of consolidation, defensive action, and perhaps a lull in activism while members prepare for the next round of confrontation and accustom themselves to operating in an increasingly clandestine manner. Historically, such periods of lull have punctuated the African nationalist struggle in South Africa, alternating with periods of open resistance and revolt. This has been the pattern for most of this century, and there's no reason to assume it won't continue to be the pattern. All that changes is the length of the lulls, which become shorter between each successive cycle of rebellion.

A third trend in black politics is toward a growing solidarity between organized labor, youth and student groups, and township-based civic organizations. Increasingly over the past year, these groups have engaged in joint campaigns and joint planning, and the tendency for the large majority of them has been to line up behind the symbols and policy positions of the banned African National Congress. I am referring here mainly to the many affiliates of the UDF and COSATU, which dominate respectively the areas of youth and community organizations, and the labor field. Not all affiliates of these two movements see eye to eye on every issue, and there is also a range of black political organizations which are not oriented toward the ANC, but the broad tendency has clearly been towards a coalescing of support behind the traditions and symbols of the country's veteran nationalist organization, the African National Congress. In some measure, this is no doubt due to the stepped-up efforts of the government to paint the ANC as its principal adversary, an approach which has the unintended effect of attracting African admiration to the enemy thus designated.

A fourth trend is the growing politicization of the black labor movement. Since the government extended recognition to African unions in 1979, the labor movement has grown at tremendous speed, with approximately 20 percent of the workforce now unionized. Contrary to the government's

intention, which was that black unions would concern themselves solely with bread and butter issues, many workers have recognized that the root causes of their grievances are political, and they have thrown their weight behind politically-inspired stay-at-homes, such as the May Day strike of 1986 and the election protests last month. Many union shop stewards and rank-and-file workers have carried over into township civic groups the skills and tactics they have learned in union organizing, including the democratic procedures that many black unions have stressed. This appears to be laying the foundation for an increasingly strong alliance in future between organized black labor and black political groupings. The rapid politicization of labor also helps to account for the endorsement for American sanctions and disinvestment by most black union organizations, in spite of the costs which these sanctions will inevitably impose on blacks as well as whites. Sanctions have been praised by leaders of COSATU, by Cyril Ramaphosa of the National Union of Mineworkers (the country's largest union), by NACTU (the National Council of Trade Unions), and by virtually all other union representatives except those of UWUSA, the Inkatha-sponsored union grouping. In each case, the argument made is that Africans are prepared to pay the cost of shorter-term loss for the sake of longer-term gain in a situation where all possible nonviolent pressures must be brought on the government to accept change. That such a position could be taken by representatives of organized black labor is surely an indicator of the politicization to which I am referring.

A fifth trend, much in evidence over the course of the 1980s but still continuing, is the leftward drift in ideological thinking among black political activists. The capitalist system, both in its South African manifestations and in general, is broadly criticized, not only by students and intellectuals but also by black clergymen, and even black businessmen. Just last week I was told by a representative of the NAFDCC, the National African Federated Chambers of Commerce, that black shopowners who had their premises attacked by radical "comrades" probably deserved what they got because of the socially irresponsible attitudes they had acquired from western-style capitalism. Anti-American sentiment is also rife among blacks, who perceive the current US administration as allied with the Botha government, in spite of the passage of the Anti-Apartheid Act last year. An opinion survey conducted last September by Dr. David Hirschman of the American University here in Washington found antagonism towards the United States to be strong and growing among both young and old, and among both conservatively-inclined professionals as well as militant activists. The surest way to get applause at a mass meeting, he was told, was to attack the United States. For the most part, observers agree that this free-floating hostility towards the US and the system of capitalism does not readily

translate into a preference for eastern bloc countries, nevertheless I think it's obvious that the widespread identification of the United States as an enemy or as "part of the problem" is something the Congress and the American people should be deeply concerned about.

Sixth and lastly, an important trend that should be noted is the on-going reluctance of the exiled African National Congress to turn to terrorist tactics in its struggle to unseat the South African regime. We are hearing an increasingly shrill and concerted chorus of propaganda attacks on the ANC, both from Pretoria and from conservative elements in this country, trying to foster a public image of the ANC as a bloodthirsty terrorist movement masterminded from Moscow. We can expect this campaign of disinformation to intensify as the ANC makes headway in its political and military campaigns. In reality, however, the ANC is continuing to exercise supreme restraint in its choice of weapons against the South African regime. While lapses have occurred and a small number of civilians have died as a result of guerilla actions, the policy of the ANC continues to be to attack only military targets and personnel and others clearly allied in a symbolic way to the apartheid state. This restraint has been maintained in the face of intense pressure from younger militants who favor "an eye for an eye." It has been maintained because of the commitment of the ANC's current leadership to avoid massive bloodshed for as long as possible. Strategically, it is part of a wider effort to win allies from amongst South Africa's embattled white population. It is a policy which can't be maintained indefinitely, and most observers believe it is a policy which can't survive the passing of the present generation of elder statesmen in the ANC's exile leadership.

Thank you, Mr. Chairman.

Mr. BILBRAY. Thank you. Ms. Voorhes.

**STATEMENT OF MEG VOORHES, REPRESENTATIVE, INVESTOR  
RESPONSIBILITY RESEARCH CENTER [IRRC]**

Ms. VOORHES. Thank you.

I'm pleased to testify today on the issue of U.S. business involvement in South Africa. My organization, the Investor Responsibility Research Center, was founded in 1972 by institutional investors to provide impartial reporting and analysis on public policy issues affecting U.S. corporations. From the beginning, South Africa and the role and impact of American firms with operations there has been a major focus of our research. More than 300 institutional investors—universities, pension funds, investment management firms, etcetera—use IRRC's research to assist them in developing and implementing shareholder voting and investment guidelines related to U.S. investment in South Africa. IRRC does not, however, recommend to our clients what their voting and investment policies should be.

In my remarks today, I have been asked to examine recent developments in U.S. business involvement in South Africa, particularly on the recent trend by many U.S. firms with operations in South Africa to sell their assets there.

Beginning with trade, U.S. domestic exports to South Africa total a little more than \$2 billion in 1984, but dropped to only slightly more than half that level in 1985 and 1986. The major cause of this drop appears to be the falling rand-to-dollar exchange rate which has made American products more expensive in South Africa.

On the other hand, the value of U.S. imports from South Africa remained fairly constant from 1984 through 1986. However, data for the first quarter of 1987 indicate that U.S. imports from South Africa are almost 50 percent lower than they were in the first quarter of 1986, and much of this decrease appears to result from the import sanctions that were imposed under the Comprehensive Anti-Apartheid Act of 1986.

Turning to bank lending, total lending by U.S. banks to South Africa nearly tripled between June 1979 and September 1984, reaching a peak of \$5 billion, but has since fallen steadily to slightly less than \$3 billion as of December 1986. In the last year and a half, U.S. financial institutions increasingly were restrained by U.S. law from making loans to South Africa.

First, President Reagan issued an Executive Order September 9, 1985, containing several restrictions on U.S. economic involvement with South Africa, including a virtually total ban on further loans by U.S. financial institutions to the South African public sector.

The enactment of the Comprehensive Anti-Apartheid Act one year later brought into effect a more sweeping ban on lending to South Africa. It prohibits U.S. banks from making any new loans to South Africa borrowers, whether in the private or the public sector, with the exception of trade related financing and loans to black-owned businesses.

Even before enactment of the Anti-Apartheid Act in October 1986, however, U.S. banks had been reducing their lending to the South African private sector. Earlier that year, 37 of the top 100

losing Afrikaner support in the process to both the CP and HNP. A group of younger, reform-minded NP parliamentarians--dubbed "New Nats" by the South African media--emerged to push the NP toward further, faster reform.

Following the announcement of elections for May 1987, however, the National Party reform program came to a halt. Security replaced reform as the predominant NP campaign issue. Wynand Malan, a prominent New Nat leader, resigned his position in the NP and ran for Parliament as an Independent. He was joined by Dr. Dennis Worrall, who resigned his position as South Africa's Ambassador to Great Britain to return home and run as an Independent. Worrall's chosen opponent: Christopher Heunis, Minister of Constitutional Planning and Development, the author of the NP reform program and one of the heirs apparent to the State Presidency.

Malan was reelected to his seat, and Worrall came within 39 votes (of almost 9,000 cast) of upsetting Heunis. Following the election, Worrall promised to continue his efforts on behalf of reform, leading observers to conclude that he would form a new extraparliamentary organization.

### THE IMPACT OF WESTERN SANCTIONS

On October 2, 1986, the U.S. Senate, by a vote of 79-21, overrode Ronald Reagan's veto of sanctions legislation. The Comprehensive Anti-Apartheid Act of 1986 (CAAA) prohibits new loans to the government of or new investment in South Africa; forbids the export to South Africa of crude oil, petroleum products, and computers; bans the importation from South Africa of gold krugerrand coins, agricultural products and food, iron, steel, coal and sugar; and terminates direct flights from South Africa to the U.S., and vice versa.<sup>11</sup>

**Sophisticated Signals.** The public justification given for the CAAA varied. One group of legislators argued that sanctions would harm South Africa's economy, and thereby force Pretoria to abolish apartheid. Another group, believing itself more "sophisticated" in its understanding of the efficacy of sanctions as a policy tool, argued that though sanctions would not significantly pressure the South African government, it was inevitable that blacks would soon rule South Africa, and the U.S. needed to "send a signal" that it was "on the right side of history."

These "sophisticated" legislators further argued that the sanctions they hoped to impose specifically were limited in scope to hurt only whites. Other legislators, who supported not just sanctions against South Africa but also disinvestment by U.S. corporation in South Africa argued that disinvestment would remove apartheid's external sources of support.

None of the justifications have proved accurate. Sanctions have undermined reform in the following ways:

1) **Positive Changes Halted.** Sanctions have not harmed the South African economy significantly enough to pressure Pretoria into further reform. Instead, the reform process has come to a halt, as white South Africa reacted negatively to what it viewed as unacceptable foreign interference in its internal affairs. Serious reforms that had begun were overtaken by the sanctions. In a "rally-round-the-flag" reaction to Western sanctions, many liberal South African whites who had pressured the government for further change ended their protests and supported their government.

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11. See "Comprehensive Anti-Apartheid Act of 1986," Public Law 99-440, October 2, 1986.

U.S. banks told IRRC that they prohibited lending to the South African private sector. Only six banks had such a policy in 1984, and much of that is the result of their response to political developments in South Africa.

Turning to direct investment, since 1981, when U.S. direct investment in South Africa reached a high point of \$2.6 billion, it has been declining. At the end of 1985, the most recent year for which the U.S. Commerce Department has figures available, U.S. direct investment in South Africa stood at \$1.3 billion.

It is important to note that the principal cause of this drop through 1985 was the sharp decline of the South African rand against the dollar, so that rand-denominated U.S. investments in South Africa are worth less when translated into dollars. However, since the average weighted value of the rand was virtually the same in 1986 as in 1985, any further fall in U.S. direct investment in South Africa for 1986 would reflect primarily the impact of U.S. corporate disinvestment.

As of May 31, 1987, IRRC knew of 183 U.S. corporations with direct investments there, compared to 266 at the same time in 1986. The pace of withdrawal of U.S. corporations from South Africa has accelerated rapidly since 1984. Seven U.S. companies sold or closed down their operations in 1984; 40 followed in 1985, and 50 in 1986.

So far in 1987, 23 companies have sold or closed their operations and 15 more have announced intentions to do so. U.S. companies have sold or closed their South African operations in response to several interrelated political and economic factors. One is the political unrest in South Africa and the government's unwillingness to address the underlying causes of that unrest. The second is the poor economic performance. Since 1980, South Africa's economy essentially has been stagnant. Adjusted for inflation, the country's gross national output in 1986 was only 1 percent higher than in 1980.

A third factor to which many departing firms have alluded is the possible loss of business with major U.S. customers that oppose their presence in South Africa. Two states and at least 26 cities and counties across the nation have adopted selective contracting laws whereby companies that seek municipal contracts are penalized or disqualified if they have ties to South Africa.

Multinational corporations that wish to end their direct investment in South Africa can choose among four methods: to close the operation, to sell it to local management, to sell it to another company, or to transfer the assets of the South African operation to a trust fund. Key components of any negotiations to sell a company's assets to local management, to a third party, or to a trust, are licensing agreements which cover existing and future products and technology. They ensure continued access to the fruits of the parent company's research and product development. Without licensing agreements, the selling price almost inevitably will be lower. It should also be noted that South Africa's establishment of a special exchange rate makes repatriation of the sales proceeds difficult.

I've been asked also to look at the employment impact from corporate withdrawal and sanctions. Since I must conclude my oral re-

marks at this point, let me say briefly that there's been very little impact so far since most of the U.S. companies that have withdrawn have sold their assets to other companies, allowing the continued use of those assets, so there would only be a loss of employment as they rationalize their operations.

[Prepared statement of Ms. Voorhes follows:]

PREPARED STATEMENT OF MEG VOORHES, ASSISTANT DIRECTOR, SOUTH AFRICA REVIEW  
SERVICE, INVESTOR RESPONSIBILITY RESEARCH CENTER

Mr. Chairman and other committee members, I am pleased to testify today on the issue of U.S. business involvement in South Africa.

The Investor Responsibility Research Center was founded in 1972 by institutional investors to provide impartial reporting and analysis on public policy issues involving U.S. corporations. From the beginning, South Africa, and the role and impact of American firms with operations there, has been a major focus of our research. More than 300 institutional investors--universities, pension funds, investment management firms, banks and insurance companies--use IRRC's research to assist them in developing and implementing shareholder voting and investment guidelines related to the question of U.S. investment in South Africa. IRRC does not, however, recommend to clients what their voting and investment policies should be. Our funding comes from research fees paid by our institutional investor clients. Except for their purchase of our publications, IRRC receives no funds from American firms with operations in South Africa or from the U.S. government.

I have made five extended research trips to South Africa since 1980, most recently for five weeks in mid-1985.

In my remarks today, I will examine recent developments in U.S. business involvement in South Africa, particularly on the recent trend by many U.S. firms with operations in South Africa to sell their assets there.

Recent trends in U.S. business involvement in South Africa

Trade: Data on recent U.S. trade with South Africa is presented in Tables 1 and 2, which present, respectively, U.S. imports for consumption from South Africa, and U.S. domestic exports to South Africa, for 1984, 1985, 1986 and the first quarter of 1987. As the tables show, U.S. domestic exports to South Africa totaled \$2.24 billion in 1984 but dropped to only slightly more than half that level in 1985 and 1986. The major cause of this drop in U.S. exports to South Africa was the falling rand-to-dollar exchange rate. According to the South African Reserve Bank, the average weighted value of the rand was \$0.68 in 1984, but dropped 33 percent to \$0.45 in 1985 and \$0.44 in 1986.

On the other hand, the value of U.S. imports from South Africa has remained fairly constant during 1984, 1985, and 1986. However, preliminary data for the first quarter of 1987 indicate that U.S. imports from South Africa are almost 50 percent lower than they were in the first quarter of 1986. Much of this decrease appears to result from the import sanctions that were imposed by the Comprehensive Anti-Apartheid Act of 1986. As you know, the CAAA prohibits the import of the following South African products: krugerrands and any other South African gold coins, military articles, uranium ore, uranium oxide, iron ore, steel, coal, textiles, and food and agricultural products. The CAAA also bars the importation of products produced, marketed or exported by South Africa's parastatals.

As Table 2 indicates, U.S. imports of several commodities affected by the import bans that had been among the leading items in U.S. imports from South Africa in the first quarter of 1986--including uranium, gold and silver, coal, and various iron and steel products--have dropped to zero or nearly to zero in the first quarter of 1987.

**Bank lending:** Total lending by U.S. banks to South Africa nearly tripled between June 1979 and September 1984, reaching a peak of \$5.0 billion, but has since fallen steadily to slightly less than \$3.0 billion as of December 1986.

In the last year and a half, U.S. financial institutions increasingly were restrained by U.S. law from making loans to South Africa. On Sept. 9, 1985, President Reagan issued an executive order containing several restrictions on U.S. economic involvement with South Africa, including a virtually total ban on further loans by U.S. financial institutions to the South African public sector. The enactment of the Comprehensive Anti-Apartheid Act one year later brought into effect a more sweeping ban on lending to South Africa. The 1986 law prohibits U.S. banks from making any new loans to South African borrowers, whether in the public or the private sector, with the exception of trade-related financing and loans to black-owned businesses. Existing loans, however, may be renewed.

Even before enactment of the Anti-Apartheid Act in October 1986, U.S. banks had been reducing their lending to the South African private sector. Earlier that year, 37 of the top 100 U.S. banks told IRRG that they prohibited lending to the South African private sector; only six banks had such a policy in 1984.

Several events in 1985 had dramatically affected international lending to South Africa. On July 31, soon after the South African government declared a state of emergency, Chase Manhattan decided to freeze all of its unused credit lines in South Africa and withdraw credits as they matured. According to press reports, several other major U.S. banks then began a phased reduction of their South African loans, prompting Pretoria to declare a moratorium Sept. 1, 1985, that halted the repayment of short-term foreign loans owed by South African private sector borrowers. International banks affected by the moratorium were given two choices: they could renew the loans with the current borrower and receive market rates of interest, or when the loans became due they could transfer the debt from the borrower to South Africa's central bank, which would pay the lender a below-market rate of interest.

In March 1986, the government and its creditor banks came to an interim agreement under which Pretoria continued to pay interest on the frozen debt and agreed to pay back 5 percent of the \$13 billion principal by June 30, 1987. In

March 1987, another agreement was signed covering the period from July 1, 1987 to June 30, 1990. Under this agreement, South Africa will pay back 5 percent of the debt in the second half of 1987, 3.5 percent in 1988, 3 percent in 1989, and 1.5 percent in the first half of 1990.

The South African debt moratorium explains one anomaly in the table in Table 3. Although U.S. lending to South African borrowers as a whole dropped from December 1985 to December 1986, U.S. lending to the South African public sector actually increased over this period. The likely explanation is that when loans to South African private sector borrowers came due, some U.S. banks selected the second option open to them under the debt moratorium and transferred those loans to the South African Reserve Bank for eventual repayment.

Direct investment: IRRC, borrowing the definition used by the U.S. Commerce Department, defines a U.S. company as having direct investment in South Africa if it owns 10 percent or more of an active South African subsidiary or affiliate. As of May 31, 1987, IRRC knew of 197 U.S. corporations with direct investments there, compared to 266 at the same time in 1986. The pace of withdrawal by U.S. corporations from South Africa has accelerated rapidly since 1984. Seven U.S. companies sold or closed down their operations that year, 40 followed in 1985, and 50 in 1986. So far in 1987, 18 companies have sold or closed their operations, and 15 more have announced their intentions to do so. Only a few U.S. firms have entered South Africa since the beginning of 1984.

From 1966 to 1981, the dollar value of U.S. direct investment in South Africa increased steadily, reaching a high point of \$2.6 billion in 1981. Since then, it has declined so that at the end of 1985, the most recent year for which the U.S. Commerce Department has figures available, it stood at \$1.3 billion. It is important to note that the principal cause of this drop is the sharp decline in the value of the South African rand against the dollar. The value of rand-denominated investments in South Africa was much lower in dollar terms at the end of 1985 than three years earlier. When one removes the impact of the weakening rand, U.S. direct investment declined by only \$50 million from 1982 to the end of 1985.

The Commerce Department will not have the 1986 figure for U.S. direct investment in South Africa until the end of June at the earliest. Since the average weighted value of the rand was virtually the same in 1986 as in 1985, any further fall in U.S. direct investment in South Africa for 1986 would reflect primarily the impact of U.S. corporate disinvestment.

#### Reasons for U.S. corporate disinvestment from South Africa

U.S. companies have sold or closed their South African operations in response to several interrelated political and economic factors.

Political unrest in South Africa: One factor is the political and economic climate in South Africa. South Africa has been experiencing civil unrest since September 1984 in the form of riots, politically inspired strikes, bombings and political assassinations. This phase of unrest began with the elections for the Indian and colored houses of the racially segregated tricameral parliament that was installed in September 1984. The parliament grants political representation, but only token power, to two black minorities in South Africa--the people of Indian ancestry and the people of mixed race known as coloreds. The black African majority population is totally excluded from representation. The

majority of blacks strongly opposed the new constitution and Indians and coloreds overwhelmingly boycotted the elections for their parliamentary representatives.

Unrest has been endemic in South Africa since then. The South African government has been unwilling to address the underlying causes of this unrest--the lack of political power for blacks--and has employed harsh repressive measures and halfhearted reforms to quell dissent. Many businessmen, viewing this political climate, have concluded that the long-term investment prospects in South Africa are inauspicious.

Poor economic prospects: Since 1980, South Africa's economy essentially has been stagnant. Adjusted for inflation, the country's gross national output in 1986 was only 1 percent higher than it was in 1980. There are several reasons for this poor economic performance: a three-year drought that devastated the agricultural sector; double-digit inflation; and the decision by many multinational banks and companies to cut back on the flow of capital to South Africa in the face of the country's lackluster economic performance and perceived political instability. Recently, boosted by the rising gold price, the economy has begun to improve but some economists doubt that the recovery will be long-lived.

Domestic pressure: A third factor to which many departing firms have alluded is the possible loss of business with major U.S. customers that oppose their presence in South Africa. Two states and at least 26 cities and counties across the nation, including Chicago, Houston, Los Angeles, New York, Pittsburgh, San Francisco and Washington, have adopted selective contracting laws, whereby companies that seek municipal contracts are penalized or disqualified if they have ties to South Africa. For some of the U.S. firms that sold their operations in South Africa recently, these municipal contracts generate greater revenues than all of their operations in South Africa. Typically, U.S. corporations' South African sales have accounted for less than 1 percent of their worldwide sales.

#### Techniques used for disinvestment

Multinational corporations that wish to end their direct investment in South Africa can choose among four methods: to close the operation; to sell it to local management under a management buyout arrangement; to sell it to another company; or to transfer the assets of the South African operation to a trust fund. In any but the first option, licensing agreements are key components. South Africa's establishment of a special exchange rate makes repatriation of the sales proceeds difficult.

Closing the operation: From the beginning of 1985 until the end of May 1987, 18 American companies have simply closed their operations and sold their assets piecemeal. In every case, the seller's operation in South Africa consisted of a small sales or representative office employing relatively few people and owning few assets. Several of the companies closing their South African operations simultaneously entered into licensing or distribution agreements with South African firms that will continue to sell and service the U.S. company's products.

Eastman Kodak's November 1986 announcement that it would close its two South African subsidiaries differed from other U.S. closures in two significant ways.

Its 600-person work force is three times larger than the combined work forces of all 18 firms that closed their operations in the last two and a half years, and Kodak will not allow its products to be sold in South Africa after it leaves. No other company pulling out has placed such a blanket ban on the export of its products to South Africa.

Selling to local management: A second and increasingly popular method of disposing of South African assets is to sell them to local managers through a management buyout. Since the beginning of 1985, 20 companies have gone this route. In a management buyout, the local management team purchases the subsidiary from the U.S. parent. The purchase price is financed through a combination of the managers' own assets (usually 5 to 15 percent of the purchase price), commercial bank loans backed by the assets of the company (usually 50 percent or more of the purchase price) and unsecured loans from investment banks (30 to 40 percent). The key actor in the management buyout is the investment bank, which must be satisfied that the new, management-owned company is commercially viable and will be able to repay the investment bank's unsecured loan within a three- to five-year period. (Occasionally, the U.S. parent has financed a portion of the purchase price and is repaid from the new company's future profits. General Electric did this when it sold its operations to local management in April 1986. However, under the Comprehensive Anti-Apartheid Act, this type of financing is considered a loans and therefore prohibited.)

For the parent company, a strong advantage of selling the South African subsidiary to local management rather than to another company, is that nearly all management buyouts tie the new company into some sort of trading relationship with the parent. The parent company can expect to earn future profits when it sells products to its former subsidiary and will receive royalty payments under licensing agreements that allow the new company to use the parent's technology and manufacturing processes. The seller can establish similar trading relationships with outside companies interested in buying its South African assets, but those links are more easily broken than the ones forged with a company formed by a management buyout, in which case management has worked with the parent company's products and technology for years and is less likely to switch to a competitor's.

The prospect of a relatively assured stream of income from a buyout company usually means the seller will accept a purchase price from a management buyout team that is lower than what is being offered by third parties. South African investment bankers told IERC that third parties on occasion have offered to pay as much as four or five times what the successful management buyout team offered.

One management consultant made the case to IERC that this sizable gap between what an outside company was willing to pay for a U.S. firm's South African assets and what the U.S. company eventually accepted from local management is strong circumstantial evidence that the buyout is a "sham" and probably has a buyback provision that favors the parent company.

An investment banker who has participated in several management buyouts involving U.S. companies disagreed. He claimed that the prices accepted in management buyouts are fair when one factors in the expected income for the seller from future royalty payments and earnings on exports to the new company. He added, however, that U.S. firms are selling their South African subsidiaries "at something of a discount since the buyers know that U.S. companies want to leave."

Selling to a third party: A third way of ending direct investment in South Africa is to sell to a South African or European company. From the beginning of 1985 through the end of May 1987, 46 U.S. firms sold their South African operations to other companies. In some cases, the transfer of South African assets was part of a larger sale of an entire division of the parent company to a third party, usually a European or another American company. In others, the sale involved only the South African operation, and the most likely buyer was a South African firm.

As noted in the discussion of management buyouts, often a third party is willing to pay more for a company's South African assets than is local management. As a result, for those parent companies that are more interested in how much they can receive now for their assets than in longer-term economic ties with the purchaser, selling to another company is more attractive than a management buyout.

Forming trusts: Finally, in the closing months of 1986, four U.S. firms (Exxon, Fluor, Johnson Controls and IBM) announced that they were forming trusts to take over their South African assets. None of the four is willing to provide details on the trust agreements, but they all appear to have the following characteristics: The U.S. parent company establishes the trust and then transfers ownership of its South African assets to the trust. The trust supposedly is obligated to repay the parent company some amount for those assets, but the repayment period apparently is not fixed. Agreements between the U.S. companies and the trusts also commit the trusts to continue making contributions to South African community affairs projects out of the profits generated by the assets held by the trust. Fluor's arrangement with the trust holding its South African assets includes an option for the company to repurchase its subsidiaries in South Africa, and Fluor's chairman has said that "the company looks forward to the time when it can again assume an ownership position in South Africa."

Of the four methods of eliminating a direct investment position in South Africa, trust arrangements are the method of choice for companies hoping to reestablish a direct investment position in that country in the next three to five years. The inclusion of buyback options and the apparent absence of repayment schedules from most trust agreements indicate that the transfer of assets is not really intended to be final. In fact, South Africa's Urban Foundation--a business-supported development organization working to improve the quality of life of blacks--has offered to hold U.S. companies' South African assets in trust until they find it politically acceptable to have direct investments in the country once again. In its proposal to U.S. firms, the Urban Foundation suggests that it would receive a portion of the dividends generated by the corporate assets it held in trust and would oversee local managements to ensure they continued to support the Sullivan principles. The Urban Foundation would transfer the assets back when the company wished to return to South Africa.

Licensing agreements: Key components of any negotiations to sell a company's assets to local management, to a third party or to a trust are licensing agreements covering existing and future products and technology. They ensure continued access to the fruits of the parent company's research and product development. Without licensing agreements, the selling price almost inevitably will be lower.

A case in point is General Motors, which sold its former South African subsidiary to its local management. The South African company, now renamed Delta Motor Corp., has entered into a licensing agreement with GM that permits it to manufacture GM cars and trucks. According to GM's 1987 proxy statement, Adam Opel AG, its wholly owned subsidiary in Germany, and Isuzu Motors Limited in Japan, in which GM has a minority interest, will continue to supply engines, transmissions and other components to Delta, and GM itself will continue to supply a limited number of components from the United States.

The licensing agreements permit Delta to continue utilizing the facilities and tooling which are, in large part, unique to the lines of products covered by the licensing agreements. A GM spokesman explained to IRRC in April 1987 that without the connection to GM, Delta would have to seek a licensing relationship with some other automotive manufacturer willing to invest substantial sums to retool Delta's factories. "An arrangement of this nature in the overcapitalized South African market would be extremely unlikely," the spokesman said, "with the likely outcome being that Delta would be put out of business." As for GM, the spokesman explained that "without the licensing agreement, whereby Delta is able to continue producing products for which the factories and equipment were designed, the company and its facilities have no value. Hence, the licensing agreement was necessary to consummate the sale and is key to GM receiving any consideration in the role of the assets."

South African law generally restricts to approximately 2.5 percent of sales the amount of royalties a local company can pay to the foreign company granting the license. This is less than the world norm of some 3 to 5 percent of sales. South African law also generally prohibits minimum fees and lump sum payments in connection with licensing agreements.

Repatriation of sales proceeds from South Africa: Whenever the purchaser of a U.S. company's assets is domiciled in South Africa, the purchase price can be repatriated only through use of the financial rand exchange rate under the two-tier foreign exchange system that Pretoria reintroduced on Sept. 1, 1985. South Africa now has two exchange rates--one for the commercial rand and another for the financial rand. The commercial rand is used for foreign trade dealings, the payment of dividends to foreign owners of stock in South African companies, and tourism. The financial rand rate, is used when a foreigner sells an asset in South Africa and then exchanges the rands he receives from the sale for dollars.

When an American firm sells its assets to a South African company, the rand proceeds from the sale go into a financial rand pool. Non-South Africans wishing to invest in South Africa, either through direct investment or by buying shares of South African companies, buy financial rand from the pool. If the supply of financial rand exceeds demand (more foreign investors are pulling out of South Africa than want to come in), the value of the financial rand will fall until a balance between supply and demand is reached. If no foreigners wanted to invest in South Africa, the value of the financial rand would fall to zero.

The rate of the financial rand has generally stood at approximately half the value of the commercial rand since its introduction and thus it results in a significant reduction in the number of dollars the U.S. parent company receives for the rands the buyer pays for the assets. At the end of May 1987, the commercial rand stood at \$0.50; the financial rand stood at \$0.27.

Royalty payments are generally permitted to leave South Africa through the more favorable commercial rand exchange rate, as are payments by South Africans for imported goods. Because of the two exchange rates, ongoing economic ties with the purchaser of the South African operations that produce royalties and orders for the U.S. company's products may be financially more attractive than a higher purchase price and no continuing economic relationship.

Employment impact from corporate withdrawal and sanctions

Impact of corporate disinvestment: The impact on South African employment of the withdrawal of U.S. corporations has probably been relatively slight. Most of the companies that have withdrawn have done so by selling their operations, thus allowing the continued use of their former assets, although some employees may be laid off as the new managers rationalize their operations or attempt to cut costs to repay loans. For example, General Motors reduced its work force in South Africa from 4,300 at the end of 1985 to 3,100 by October 1986 when it announced it was selling to local management. After a wildcat strike in November 1986 and the subsequent firing of the strikers, the new management of Delta reduced staffing levels by another 12 percent. How much of this reduction was due to a more hardnosed attitude by a management compelled to pay off the loans raised for the buyout, and how much would have occurred for economic reasons even with no change in ownership, is difficult to say. From the beginning of 1985 through May 1987, U.S. firms employing 21,000 people in South Africa have sold their South African operations to local managers or third parties.

In contrast, over the same period, only 18 companies collectively employing 180 people closed their operations entirely. As noted earlier, Eastman Kodak's decision to close its South African operations by selling off its assets piecemeal will affect approximately 500 employees, but even some of these employees may retain their jobs; a South African company recently announced that it intends to buy all of Kodak's processing labs.

Other than American companies, few other international companies have closed or sold their South African operations.

Impact of trade sanctions: The trade sanctions that the United States and other Western countries have imposed against South Africa to date have far greater potential to cause unemployment, but because they have gone into effect so recently, their impact on the South African economy and employment levels cannot yet be measured.

In 1986, Japan, the European Community and the United States imposed bans on the import of South African iron and steel. Exports are relatively important to the South African iron and steel industry. According to the 1985 South African Yearbook, exports have accounted since 1977 for approximately one-third of the annual sales of steel products by Iscor, a major, government-owned, steel producer.

In 1985, France announced that it would not renew its coal importation contracts with South Africa, and both Denmark and the United States passed legislation at the end of 1986 prohibiting further coal imports from South Africa. The Financial Mail of South Africa reported in May 22, 1987, that although five million tons of South African coal sales were displaced in 1986 because of the Danish and French actions, South Africa's coal exports that year

2) **Reduced U.S. Influence** . Nor have sanctions increased U.S. influence in South Africa. Even the Washington Post, which editorially supported sanctions last year, belatedly recognized the counter-productive nature of sanctions, publishing a news analysis last December entitled "Sanctions Said To Weaken U.S. Influence in Pretoria."<sup>12</sup> The article detailed loss of U.S. clout in South Africa as a result of sanctions. Example: Howard Wolpe, the Michigan Democrat, chairman of the House Foreign Affairs Committee Subcommittee on Africa, wanted to lead a congressional delegation to South Africa this January to examine the effects of sanctions. He and his delegation were denied visas by South African Foreign Minister Roelof "Pik" Botha, who declared "I know of no greater enemy [of South Africa] than Mr. Wolpe."<sup>13</sup> An Agency for International Development official planning to do research on the health conditions in black "homelands" in South Africa was also refused entry by Pretoria following the imposition of sanctions.

3) **Shift in Political Dynamics** . What even Botha could not predict was the astonishing success of the Conservative Party, which captured an estimated 43 percent of the Afrikaner vote. It replaced the Progressive Federal Party as the official opposition party in the Parliament.<sup>14</sup> As the strongest opposition party, the CP will influence greatly the agenda for debates in the Parliament. For the first time since the National Party's victory in 1948, it will no longer be criticized in the Parliament for moving too slowly to eradicate apartheid, but for moving at all.

4) **Harmful Impact on Blacks** . To the extent that sanctions have hurt South Africa's economy, they largely have damaged those sectors in which blacks make up the dominant share of the workforce, such as agriculture and food products. Example: exports to the U.S. of rock lobster, which amounted to \$30 million annually, were terminated as a result of the CAAA. The U.S. market accounted for 75 percent of South Africa's exports of rock lobster and 50 percent of the total volume. Though South African distributors have found new markets for almost 70 percent of the exports, they now receive a lower price for the product. Black fishermen bear the brunt of the monetary loss.<sup>15</sup>

5) **Marginal Impact on Whites** . White South Africans, especially the Afrikaners, are largely shielded from the effects of sanctions. Over 40 percent of the Afrikaner adult population works in the South African government bureaucracy. As the Southern African Catholic Bishops' Conference reported this January 27, in its scathing indictment of sanctions, "...those responsible for policy in the government and in government supporting roles, have effectively shielded themselves against the impact of deprivation. They will be the last to feel its effects."<sup>16</sup>

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12. See Joanne Omang, "Sanctions Said To Weaken U.S. Influence in Pretoria," The Washington Post, December 18, 1986, p. A62.

13. See "Foreign Minister Interviewed on Foreign Relations," FBIS-MEA, December 23, 1986, p. U5.

14. Conversation with Dr. Sampie Terreblanche, Washington, D.C., May 21, 1987.

15. See Vivienne Walt, "Sanctions Ensnare Fishing Village," Newsday, February 22, 1987.

16. See "Report to Bishops: Sanctions Counterproductive," The Wall Street Journal, February 11, 1987. What is all the more interesting about this report is that it was commissioned last May, when the Southern African Catholic Bishops' Conference recommended the imposition of sanctions by the West. As a result of the report, the Conference has changed its stance.

were still higher than in 1985. The expiration of the relatively small 800,000 ton/year contract that South Africa had with the United States has not had a practical impact on the industry. Moreover, the European Economic Community, which is the largest customer of South Africa's coal, voted last year not to impose a ban on further imports. However, if the European Community were to reverse its decision, it would have a serious impact on the industry. According to The Financial Mail, the major coal producers in South Africa derive 50 to 70 percent of their revenues from exports.

Both the United States and Canada have prohibited further imports of South African sugar, causing South African sugar exports to drop 16 percent, according to the May 14, 1987, issue of The Weekly Mail, a South African publication. The 1985 South African Yearbook reports that on average, 45 percent of the South African sugar crop is exported.

#### U.S. investment in South African gold shares

Finally, I have been asked to testify on recent trends in U.S. investment in South African gold shares. Unfortunately, I have been unable to obtain up-to-date data. However, as a benchmark, committee members may wish to note that in December 1983, according to a June 1984 report by Davis Borkum Hare, a South African investment firm, U.S. nationals held 17.7 percent of all South African mining shares and 24.2 percent of the shares in South African gold mines.

TABLE 1

1957/07/87  
17:30:43

Leading items in U.S. imports for consumption from Republic of South Africa in  
1984, 1985, 1986, January-March 1986, and January-March 1987  
(C.I.F. value, in thousands of dollars)

TUSA Number	Description	1984	1985	1986	January-March	
					1986	1987
60502	Platinum metals, unwrought	508,949	994,055	736,989	175,551	190,367
57011	Natural precious and semiprecious stones	260,779	180,329	227,248	48,805	1,648
42250	Uranium oxide	66,448	75,260	217,444	48,088	0
60920	Gold or silver bullion/ore	9,172	1,129	79,187	65,728	0
60624	Ferrocromium, <3% carbon	96,774	85,367	77,627	28,145	12,941
52039	Diamonds, >5 carat	90,000	77,670	73,994	18,133	6,841
52191	Coal	27,081	43,418	61,794	11,588	0
42252	Uranium compounds, other	7,665	85,420	50,380	2,618	0
52029	Industrial diamonds, natural	46,041	44,808	37,757	8,081	146
25002	Wood pulp; rag pulp; and other	24,945	22,558	37,049	8,992	9,998
60620	Ferromanganese >4% carbon	38,704	31,559	36,599	12,178	5,479
60262	Materials nes, consisting of	6,564	16,904	30,285	9,930	8,879
60814	Ferrosilicon manganese	2,909	22,840	26,957	7,569	6,362
60813	Sheets of iron and steel, nsp	24,574	25,309	26,470	6,023	102
60763	Plates and sheets of iron and steel	27,468	19,612	26,275	8,590	0
80000	U.S. goods returned	35,033	46,898	26,028	7,740	6,780
11445	Shellfish other than clams, crabs, and mollusks	33,518	31,420	25,816	4,576	0
60980	Angles, not alloy	35,590	19,463	24,181	7,797	40
61808	Unwrought aluminum, other	9,433	17,619	22,019	3,337	6,035
60766	Iron/steel plates, not alloy	29,705	17,907	21,848	7,189	41
52032	Diamonds, <5 carat	23,878	17,036	19,199	4,702	8,281
80115	Chrome ore	11,905	16,028	17,452	5,888	3,884
61002	Unwrought aluminum nes, other	22,278	2,672	17,025	2,058	0
47525	Motor fuel	1	0	16,756	12,695	0
52221	Fluorspar containing over 97% calcium fluoride	19,448	17,113	16,027	4,037	3,620
61206	Unwrought copper, other	6,672	8,106	14,311	3,449	1,815
61032	Welded pipes, >.375 inch nominal diameter	20,350	15,737	13,567	4,077	11
60767	Sheets not coated or plated with aluminum	23,014	9,493	12,000	4,801	23
62003	Unwrought nickel	11,165	11,460	11,652	3,053	2,981
67820	Machinery for sorting, screening, or separating	7,033	9,490	10,789	2,352	2,596
	Total	1,667,759	1,548,257	2,005,101	531,484	277,529
	Total, all items imported from Republic of South Africa	2,571,873	2,166,878	2,460,524	659,354	348,569

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 2

06/04/07  
17:12:46

Leading items in U.S. domestic exports to Republic of South Africa in  
1984, 1985, 1986, January-March 1986, and January-March 1987  
(F.o.b.s. value, in thousands of dollars)

Sched B Number	Description	1984	1985	1986	January-March--	
					1986	1987
67855	Parts of office mach, other	60,556	40,719	51,893	14,689	8,616
69405	Aircraft, parts	51,549	51,527	51,002	8,721	12,085
67628	Digital cp's	95,924	55,878	49,438	12,074	15,915
66405	Mech shovels, nsp	87,216	47,363	40,061	8,644	9,715
43310	Chem mixtures & preps	33,087	25,038	35,034	7,745	7,129
69229	Chassis, parts	38,292	20,567	23,788	6,216	4,923
68454	Telegraph apparatus	2,694	10,347	20,243	937	1,113
25285	Paper, impregnated	23,400	19,711	19,317	4,552	3,487
13130	Rice, not parboiled	24,224	1,822	18,936	6,368	3,132
13068	Wheat	4,478	1,685	18,336	0	0
67627	Digital machines	26,598	19,178	19,065	2,508	2,827
81990	General merchandise <\$500	17,289	12,026	14,193	3,530	8,581
69440	Aircraft	17,534	14,864	14,186	3,061	6,592
42084	Sodium carbonate (soda ash)	8,987	14,171	16,186	2,788	3,762
68590	Electrical switches	27,534	18,685	15,170	2,788	3,162
43112	Polyhydric alcohols	14,752	14,943	13,518	3,866	1,502
69238	Tractors, wheel type, parts	18,645	15,379	13,383	3,455	3,341
17055	Cigarettes	19,834	18,571	12,682	1,418	1,042
66054	Parts of comp-ignition engines	12,734	12,350	11,693	2,171	2,177
72315	Film, not motion picture	18,403	12,955	11,772	2,621	2,340
25284	Clay coated paper	11,191	8,295	11,639	2,705	3,327
70916	Electro-medical apparatus	10,788	8,860	10,945	4,038	3,610
48689	Herbicides, other	3,585	3,429	10,564	2,561	3,071
91880	Shipments valued \$10,000 and u	18,859	10,453	9,871	2,302	2,141
71180	Pressure gauges	21,807	13,710	9,080	1,807	3,188
69033	Parts, for locomotives	13,386	10,592	8,978	2,018	1,729
43132	Esters of monohydric alcohols	7,847	7,008	8,924	3,765	634
30932	Filaments, not of glass	7,468	5,610	8,559	2,780	1,959
66094	Pumps for liquids	17,517	10,956	8,430	2,115	2,065
71250	Instl for measuring electrical	13,831	6,855	8,052	1,597	2,504
	Total, all items exported	752,920	522,767	569,482	120,787	126,405
	to Republic of South Africa	2,243,760	1,190,684	1,129,463	248,486	263,869

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note: Trade does not include special category exports.

TABLE 3  
U.S. BANK LENDING TO SOUTH AFRICA

(\$U.S. millions)	Sept. 1984	Dec. 1984	March 1985	June 1985	Sept. 1985	Dec. 1985	March 1986	June 1986	Dec. 1986
Total loans to all South African borrowers	\$4,976.4	\$4,704.5	\$4,198.5	\$3,923.1	\$3,441.1	\$3,240.5	\$3,180.0	\$3,060.0	\$2,957.0
Loans to the public sector	343.0	353.1	302.2	217.0	180.3	114.1	148.0	145.0	320.0
Loans to South African banks	3,531.4	3,228.6	2,753.3	2,495.6	2,231.3	2,167.5	2,099.0	2,019.0	1,899.0
Other private sector loans	1,103.8	1,122.7	1,142.9	1,210.4	1,029.4	958.6	933.0	896.0	740.0

Source: "Country Exposure Lending Survey," Federal Financial Institutions Examination Council

Mr. WOLPE. Thank you very much.

Thank all of you for some very excellent testimony.

I would like to just pursue for a moment, the broader question of sanctions. You have heard some suggest explicitly or implicitly that the sanctions have been a mistake and that they ought to be withdrawn at this point, or relaxed.

I would invite your assessment of what would follow, what would be the consequences of relaxation of sanctions and economic pressure.

Mr. Greenberg, would you like to lead off?

Mr. GREENBERG. I would mainly reiterate the comments I offered at the introduction.

I'm sure you share my frustration with an analysis of the effect of sanctions that depends on a short, partial, limited time frame. The use of the election results, as evidence of a failed pressure on the regime, it seems to me, to offer a time frame that is too short and to have an object of influence that is too narrow; that is, it focuses only on the South African Government as a decisive party to developments there.

Everyone I know in South Africa presumes this is a very long struggle and process. I don't think anybody believes that the sanctions can be evaluated in this period of time. Most of the evidence I'm sure that we all have on this question is essentially anecdotal, and I note Professor Gerhart's comments on the applause in response to anti-American comments.

My experience in South Africa in the period from November, December, after the passage of the legislation, was that I, as an American, found it much easier to function within the black townships. Being an American was less of a problem than it was before.

I think the main problem with sanctions are the inconsistent voices speaking on the question. The Administration, as reflected in the testimony here presented earlier, seems to be part of the sanction busting process rather than a promulgation of a unified policy. It is difficult, as a result, to draw a conclusion about the effects of sanctions.

I think the goal ought to be to talk about how one finds a consistent voice, how one spreads the impact. I think only then can one think about trying to look at what the impact of this legislation has been. In any case, it's going to be a longer term process and not one I think we can evaluate over a shorter period.

Mr. WOLPE. Thank you.

Mr. Goldman.

Mr. GOLDMAN. Thank you.

I would agree. We can't really evaluate the effect of sanctions at the end of 8 months; it's impossible. You've said today that it took 6 years before the Congress decided to take a stand viz-a-viz constructive engagement.

It seems to me that perhaps that would be a useful time limit for the Congress to set for itself as far as sanctions is concerned. Now, remember, it set very heavy criteria on the constructive engagement policy. It said it did not succeed in overthrowing apartheid. That was the basic problem in the end with constructive engagement.

Well, perhaps those who promote the idea of sanctions ought to set themselves a similar task. At the end of 6 years, evaluate whether sanctions have managed to overthrow apartheid. If they have not, perhaps at that point, the thing ought to be seriously re-evaluated.

In the meantime, the endless debate that takes place in this country about whether to or not in some way does distract from other issues that I think we should take up. As far as I'm concerned, sanctions are now a fact. They are a player in South African politics. It's difficult to assess how.

Voices such as Alan Paton say, unquestionably, they influence the shift to the right, as he saw it in South Africa. Unquestionably, he says, Afrikaners cannot be forced to change. They can be led, he said, but they will not be forced.

That is a real difficult problem for us to work with. What would it take to lead Afrikaners? A complicated and difficult question, I agree.

So, I think sanctions are a player in South Africa. The question is what, in addition, will we do? How else will we contribute to helping South Africans find a way? And here it will be required a kind of subtlety of policy that will keep us very focused on details in South Africa.

Are we willing to accept any kind of incremental what seems to us to be incremental solutions. They're not solutions to the entire problem but steps toward it. Is Indaba, in our view, a step? I would say, absolutely, and something that we should try to encourage.

Is there a way to modify our conception of sanctions with regard to the KwaNatal area, if this is a successful procedure. Is there such a way? I leave that to the legislators, but perhaps that is a tack to take.

There are other ideas on the platform in South Africa that are interesting and have to do with not being able to resolve the question of apartheid on the national level, but perhaps finding incremental solutions on regional and local levels. Perhaps those are some of the steps South Africans will have to take before we ever reach something resembling a national solution.

And perhaps we can encourage some of those developments.

Mr. WOLPE. Professor Gerhart and Ms. Voorhes, would you?

Ms. GERHART. I just have two further observations to add, and I find it difficult to get very concrete about what would happen if sanctions were lifted, because I have a feeling then we'd just go back to where we were before, if there were, as we had for the first 6 years of the Reagan administration.

I have two problems with the debate about sanctions as its been laid out here today. One is this idea that I heard repeatedly from this table when the Administration's spokesmen were here that somehow by imposing sanctions on South Africa, we are trying to reduce their economy to a rubble. We are trying to create a situation in which here, as I see Professor Goldman is quoting Alan Paton, that we are trying to create a situation where some kind of utopia will arise from the ashes of the South African economy. And he's rejecting the possibility of that.

I don't see that we can put the onus on the United States if South Africa's economy goes into a period of decline as a result of

sanctions. I think the onus is obviously on the South African Government. We've placed conditions under which sanctions will be lifted, if these four or however many there are conditions are met. Unban the ANC, lift the state of emergency, release political prisoners, open up a dialogue between the forces in conflict in South Africa.

So if the government is unwilling to take those very reasonable steps in response to the sanctions threat, then it's not the United States which is reducing or trying to reduce their economy in an effort to squeeze them. It's they themselves who are responsible for the consequences of their own political decisions.

So I think that needs to be put in perspective in the sanctions debate.

The other thing that I find misleading on the part of the Administration spokesmen in their discussion of sanctions is that they appear to want to substitute the call for negotiations in place of the call for sanctions. We repeatedly had Assistant Secretary Crocker saying, you know, let's don't try to force them through sanctions. Let's try to persuade them to negotiate, as if somehow negotiations could be a substitute for pressures, or outside external efforts.

And I didn't hear anyone except perhaps Representative Dellums really try to press the Secretary to say what he thinks it will take to bring South Africa to the negotiating table. It's not the slightest bit interested at the moment in negotiations. And I don't see that it ever will be until the cost has been raised high enough to in essence force negotiations on the government as their best option.

And they're a long way from seeing it as their best option at this point. So I don't believe any amount of creative diplomacy or whatever the Secretary has in mind is really going to be a substitute for the kind of pressures that sanctions will impose on them.

Mr. WOLPE. I come back to two points when I think through this question, and I'd be interested in the reaction of the panel to these observations.

One is the very kind of simple cost benefit kind of analysis which is the point I made earlier in the exchange with Dr. Crocker. I don't know of any instance in which a government, especially a minority government has ever voluntarily relinquished power. And this notion that somehow we will persuade them to do that I think is absurd on its face.

My own judgment is that the white minority regime will give up its monopoly of control and enter into negotiations for the creation of a new political order only at the point at which they conclude they have more to lose than to gain by trying to hold on. And so my point of view in my approaching the subject of sanctions is very straightforward. Anything the United States does that conveys benefits to the regime is a disincentive to negotiate and it's an incentive for much greater violence and bloodshed in the promulgation of the struggle.

Anything that the United States does to impose costs adds to the internal pressures that the regime is facing. Now, maybe I am missing something, but it seems to me that not only argues for the maintenance of sanctions, it also argues, if that analysis is correct, for an intensification of sanctions. I would have thought—and

that's why I supported the Dellums' approach the last time around—because you know, there's another argument.

I wish Mr. Keyes was still here because he made a very impassioned defense of the notion of economic change creating democratization. And that was basically his argument that the economic empowerment of the black community was going to be the strongest force pressing for the end of apartheid.

Well, unless I misread history, I can think of many instances in which economic change, industrialization, the development of trade unionism, all of that, such as Nazi Germany, such as in Stalinist Russia, such as in South Africa over the past few decades, have in each instance been accompanied not by democratization or political liberization, but by consolidation of the totalitarian state. I mean, I just don't see anything intuitively obvious that one process necessarily moves the system in a democratic direction.

And I don't understand the logic of it, but I certainly don't think the empirical record suggests this kind of inextricable linkage. And I think that argument is reflective in part upon the too easy tendency to project onto the South African situation, America's own history and experience with both racism and the civil rights movement in America.

There are obviously some parallels. The ideology of racism, of white supremacy, the segregation, the discrimination, the inequalities, all of that.

But there are two fundamental differences that I think have to be factored into our analysis. One of them is, South Africa is a totalitarian police state, one of the most brutal, one of the most comprehensive in the world. And when South Africans here in the United States hear Americans talk about the need for patience and evolutionary process and all of that, those words sound ludicrous to certainly black South Afrikaners, for the most part.

And secondly, the other difference is the majority minority situations are reversed. In America, the excluded black group was a minority. Whites were in a majority. Full black political participation could be countenanced by the white majority without risking a loss of white majority control over the national political system.

In South Africa, the end of apartheid means the end of white minority rule, it means the loss of power. It does not mean the exclusion of whites from the political system, any more than blacks have been excluded from the American political system. Whites can in fact participate and maintain a significant stake in a post-apartheid South Africa, but it will mean a loss of control.

And it's in that context that I think that frankly, at least as it seems to me, some of the arguments to talk about a black economic empowerment and advancing the process of change are really quite turning both history and logic on its head. I mean, in fact, that kind of effort is more likely to sustain apartheid rather than to lead to its dismantlement.

Would you care to react to that?

Ms. VOORHES. I see two reactions among whites to sanctions. I think one is a heightening of bravado, on attitude of "We'll show them; we'll replace the companies that leave." However, another response to sanctions has been to initiate thinking about power sharing. A factor for the three independents who broke away from

the National Party was concern over how South Africa was being perceived or received in the West. Dennis Worrall said he found it very difficult to carry out his responsibility as Ambassador in London defending South Africa's policies to the West.

Before considering further sanctions, the subcommittee might wish to consider the views of the black union movement in South Africa. Black unions have been forced to move into the political breach, as the UDF and other groups have been repressed and their members forced into hiding, the union's members also are the most directly affected by sanctions. There has been a lot of debate within the black union movement about what form sanctions should take.

Mr. WOLPE. Professor Greenberg—or Mr. Goldman, whoever?

Mr. GREENBERG. Let me applaud your good sense on this issue.

I find I do have difficulty listening to the Administration—very practical, hardheaded people who when they look at this issue, imagine that good will will produce changes in an area where privileges are so deeply entrenched. I think your analysis is on the mark.

Let me suggest some other elements of the sanctions issue and the way they play in South Africa. These too ought to be part of our analysis as we think about what to do next. Rising costs for maintaining racial domination is one one of these effects. Another effect of sanctions, and it is evident in the present period, is the introduction of divisions within the Afrikaner community.

The Afrikaner leadership in South Africa present an image of an Afrikaner community immune to pressure. I think that image is incorrect; that is, I believe the community is divided on how to proceed. I think the community has many minds, and I think they are almost immobilized by those divisions. There is splintering along organizational lines, intellectual lines. Sanctions are part of a process that has invited that division.

In the absence of sanctions, people could proceed without having to address the kinds of real divisions that exist within that community. The rising costs force the different elements of that community to face the consequences of their policies, and it has led to some people, the Independents, some major Afrikaner business associations, some major businessmen, to venture to break with the government.

Maybe over time with accelerated sanctions, the numbers who feel they need to break with the government will increase. But the notion of division I think within the dominant community is an important element of the sanction debate.

In addition, I think one ought to be thinking about how one protects those elements in society that we believe would help bring about a democratic solution in South Africa. If we believe the trade union movement is an important part of the future, we ought to be thinking about predictive sanctions; that is, the government ought to know that there will be steps taken by this government if actions are taken against those organizations.

The Administration that sat here in great eloquence defending the trade union movement would probably be the first to oppose restrictive sanctions in response to state action against the rights of that trade union movement. But prospective sanctions, which pro-

tect those elements of society fighting for democratic solutions, ought to be the next stage in thinking about sanctions.

Mr. WOLPE. Professor Goldman.

Mr. GOLDMAN. You know, I understand the desire absolutely of black people and of ourselves that apartheid end tomorrow. I wish it were so, and I wish, you know, I wish we could talk about just what we wish.

But if we talk about the issue of time, perhaps the Rhodesian example can give us one way of judging the length of time that a complete sanctions campaign would take in order to finally bring the South Africans to their knees, assuming that indeed would be what happened.

It took 15 years for the international boycott, almost absolutely complete with only the South Africans allowing that to break. This was a land-locked country. It had an economy far less powerful than the South African economy. It took 15 years to finally have the Rhodesians come to negotiate, and then because the South Africans clearly indicated they would no longer support them. What length of time will it take, assuming Alan Paton is right in his judgment about Afrikaners, and I believe he is—and this is a kind of judgment that one makes in the end.

What length of time will it take before finally these Afrikaners would be willing to negotiate, sit down and negotiate?

Mr. WOLPE. Let me suggest, if I may, that I'm not sure that is in fact the right question. There's no one up here and there's no one in the Congress that I'm aware of that either has made a claim that the application of sanctions was going to lead to the immediate dismantling of apartheid, nor have we even tried to assert a specific time frame.

What we have argued, though, is quite different, which is that the failure to impose sanctions has only prolonged both the struggle against apartheid and reinforced the Afrikaners view that they can hold on indefinitely. And reciprocally, I would argue that the failure—analogously, I would argue that in the Zimbabwe case, if you talked to those that were involved in the struggle, they will affirm the importance they attach to the application of international sanctions and the sense of isolation that the Rhodesian Government experienced.

Not that sanctions brought down Rhodesia and transformed it into independent Zimbabwe state but that it did facilitate the process, and absent sanctions, that struggle may have well been much longer.

Mr. GOLDMAN. Well, OK, I mean, what is the time limit, though? Thirty years? Fifteen years in Rhodesia but 30 years perhaps in South Africa, let's simply suggest that.

One of the problems that we're going to have to come to grips with as we proceed is that any action that finally is taken by this current South African Government, one that we would welcome, for instance, the release of Nelson Mandela, would immediately cause an overwhelming reaction, at least judging by this election, to the right in South Africa.

I mean, much of the support to the right comes from security people, from army people, from police. One of the great dangers that we could in fact precipitate is an emotionally refortified apart-

6) **Economy Stimulated** . For the most part, sanctions have not damaged the South African economy. South African wholesalers have found new markets for their goods, working in some cases through third countries.<sup>17</sup> Further, the South African economy has acted to counter loss of certain imports by creating new firms to provide those products. In a sense, to the extent sanctions have affected South Africa, they have forced South Africa into an import-substitution mode, causing a stimulus to the economy.

Nor has disinvestment hurt apartheid. U.S. and other Western corporations leaving South Africa in most cases have sold their assets to South African businessmen. This has resulted in a transfer of assets from the West to South Africa, at firesale prices, enriching South Africa in the process. In the best example, the giant Anglo-American Co. of South Africa was able to buy out South Africa's largest bank, Barclays National, by paying \$8.06 per share for stock trading previously at \$10.30.<sup>18</sup> Barclays will receive only half that amount because of South Africa's two-tiered exchange system, and Pretoria will save roughly \$14 million in foreign dividend payments per year.

7) **Private Sector Anti-Apartheid Efforts Weakened** . Disinvestment by Western corporations and the transfer of their assets to South African businessmen allows the new firms to bid on South African government contracts, without being bound to pay for costly social responsibility programs, such as those called for in the Sullivan Principles.<sup>19</sup> Example: the new South African owners of General Motors' old plant in Port Elizabeth will be able to produce trucks for the South African Defense Forces. So doing, it will get back into a lucrative market long denied the company when it was owned by the U.S.-based parent firm. And General Motors Chairman Roger Smith, in announcing the decision to withdraw from South Africa, admitted that the new owners would have "greater opportunities for reductions in labor and benefit costs." In other words, the South African GM workforce is likely to have its benefits and wages slashed.<sup>20</sup> The newly-purchased companies, moreover, will not feel restrained from reducing their contributions to black education, housing, and medical programs.

8) **Government Backtracking** . Since the election, Pretoria has cracked down on violations of the Group Areas Act, which legally divides South Africa into White, Black, and Colored living areas. Over the past several years, South African authorities discreetly had declined to enforce the act, in what was widely viewed as a precursor to scrapping it altogether. (This has been Pretoria's standard technique for eliminating apartheid regulations.) But since the election, Pretoria has informed hundreds of blacks and coloreds that they must move from White areas within three months or face eviction. Knowing of the blacks' predicament, white realtors are taking advantage of the situation, buying up their homes at below-market prices.

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17. This was the case with sanctions against Rhodesia. The Smith government found a ready buyer in the Soviet Union for its chromium: Moscow then sold the chromium to the West at inflated prices. Rhodesia sold its chromium, and Moscow pocketed the difference.

18. See Peter Brimelow, "Why South Africa Shrugs at Sanctions," *Forbes*, March 9, 1987, pp. 99-104.

19. The Sullivan Principles, named after the Rev. Leon Sullivan of the General Motors board of directors, set the standard for corporate conduct in South Africa by U.S. firms. They call for non-discriminatory hiring and promoting practices, equal wages for equal work, and other measures designed to help eliminate apartheid.

20. See William Raspberry, "Quitting South Africa: If That's the Answer, What's the Question?" *The Washington Post*, October 22, 1986, p. A25.

heid. That is one consequence, because we continue to say that South Africa is the worst thing on the face of the earth, one consequence, one possible consequence of this particular policy is that we could kick into help, kick into place—I don't want to say that we're the entire responsibility—an emotionally fortified apartheid regime that's willing to take the place down,

We have examples like that in the world, too.

Mr. WOLPE. Let me just say that from a black South African perspective, that has got to be I think an insensitive suggestion, the notion that you do not now have a fortified emotionally entrenched apartheid system that dehumanizes people on a daily basis.

Mr. GOLDMAN. You do, obviously, I know that, too.

Mr. WOLPE. Well, yeah, but sometimes we say that fairly glibly, but the fact is, that is the case, and the notion that somehow we are going to—I guess I'm more impressed frankly by the actions of blacks inside South Africa themselves who every day are exposing themselves not only to economic loss, but to enormous physical risk in terms of their life and liberty, by their participation in non-violent demonstrations or trade union actions or consumer boycotts.

And it intrigues me that we are unwilling to listen to what those voices are saying and give them the same essentially importance, the same validity as other voices of the South African white government.

Mr. GOLDMAN. No one is arguing that we shouldn't give them validity. I mean, if we really wanted to consult black people who suffer as a result of sanctions, though, that's something I'm afraid we haven't done very well.

Mr. WOLPE. I've long exhausted my time.

Let me yield to my very patient colleague who has been the only other member to participate in the total duration of the hearing today, for which I've been most grateful.

Mr. Bilbray.

Mr. BILBRAY. Well, that's one of the questions I wanted to ask maybe Professor Gerhart.

Earlier, you mentioned a professor at American University that had done a survey of public opinion in the Union of South Africa toward the United States.

Again, I've met with black leaders who were members of the ANC or in the activist group against the present regime. I've met also with black leaders that were orchestrated by the representatives of the South African government who had 180 degree different opinion of our sanctions and our disinvestiture of this country.

I mean, does anyone know, any of the group, what does the typical African in South Africa feel?

Ms. GERHART. The answer to your question is, there is no answer. There have been many polls, and whenever the results come out, they are trumpeted by which ever side the conclusions seem to support.

Sometimes the very same data is interpreted differently, depending on the point of view of the interpreter. They almost never, unless you really go and seek out the details, they almost never tell you exactly how the questions were put.

Mr. BILBRAY. Sounds like a Congressional election, doesn't it?

Ms. GERHART. Well, yes.

I mean, a recent one showed that in response to some question which was never specified in the reports that the media gave, 43 percent of Africans polled, African workers polled, said that they would be prepared to lose their own job if it would hasten the end of apartheid.

Now, the Washington Times reported that poll, and it said you know, see how opposed Africans are to sanctions. Only 43 percent of them said that they'd be willing to lose their jobs.

I would have read 180 degrees the other way. Can you imagine in this country 43 percent of the work force volunteering to lose their jobs if some political goal could be accomplished? You know, that goes beyond their own immediate personal interests?

I mean, polling is a tricky business, as my colleague Professor Greenberg will attest, who is concerned in it. So I can't give you an answer if you want to know how Africans feel.

Mr. BILBRAY. Well, what concerns me though is on polling, what are they polling? If you go into a certain area, you may get one response. Again, if you get out of the more rural areas, you may get a different response.

Ms. GERHART. That may change, you know, from week to week or month to month.

We have an election, a mock election that was held the week of the white election, where a newspaper in Soweto, the Sowetan polled, they said, 17,000 blacks voted in the Johannesburg area. And they came up, they voted for who they'd like to see as the head of state. And the front runner, the number one finisher in the sweepstakes was Nelson Mandela who came out with about 10 percent of the votes.

The next person was Oliver Tambo who is the acting head of the ANC. The third person was Bishop Desmond Tutu. I believe the fourth person was Reverend Allan Boesak. Now, all of those people are very hardline opponents of the government and speak for the most what the conservatives in this country call, "extremist" views.

I don't see them as extremist. I see them as main line African point of view.

I think the fifth finisher in the contest was Dr. Van Zyl Slabbert, who is an Afrikaner, but who has broken with parliamentary politics and gone into the extra parliamentary opposition to lend weight to the feeling that what happens in the South African Parliament is no longer really relevant to the struggle.

There was one other white on the list, I think number 8 or 9 was Helen Suzman, who is still in Parliament, a veteran campaigner for African rights.

And so forth. But if you look down the list, you don't find Gatsha Buthelezi on the finishing line, you don't find some of the more conservative African elements that would be brought to this country on government sponsored tours to meet with congressmen and so forth, who don't really, I think, represent more than either local or very small sectional interests or no interests at all.

Mr. WOLPE. Any other?

Mr. GOLDMAN. May I respond to that?

First of all, it's an outrage to speak of Gathsa Buthelezi as a government-sponsored person who comes to this country on those terms. He doesn't. If there's any—

Ms. GERHART. Well, I wouldn't agree with that.

Mr. GOLDMAN [continuing]. Figure in the South African political situation—

Mr. WOLPE. Could I just interrupt that for just a moment? I think it's useful to clarify the source of Mr. Buthelezi's funding?

Mr. GOLDMAN. Yeah, we know the source of his funding. We also know the degree to which he—

Mr. WOLPE. No, no. Just—

Mr. GOLDMAN [continuing]. Excuse me. That question can be answered.

Mr. WOLPE. Well, could you answer it?

Mr. GOLDMAN. I intend to answer it, thank you.

Mr. WOLPE. OK.

Mr. GOLDMAN. The source of his funding is indeed the South African Government. If you only want to, if you only want to talk about sources of funding and make that everything, then the ANC is a very dangerous organization. But we are willing to look at what the ANC does and says in many different degrees.

Do the same, have the same treatment for Gathsa Buthelezi. It's your responsibility to do so.

Now, this man has resisted apartheid in the most fundamental way in South Africa, and that is, he has seen to it that seven million Zulus are not denationalized. And you know, as well as I do, how critical that is in terms of the future of South Africa.

Mr. WOLPE. Dr. Goldman, if I may interrupt just for a second to clarify the point and try to undercut some of your anger, because I think you missed the point.

Mr. GOLDMAN. The point was that—

Mr. WOLPE. The point was that Gathsa Buthelezi does not have a constituency.

Mr. GOLDMAN. Not that he has a constituency, the point that he resists apartheid. That's the issue.

Mr. WOLPE. And that resists apartheid in his fashion.

Mr. GOLDMAN. Well, everybody has a fashion, sir.

Mr. WOLPE. That's correct. The point that I heard Dr. Gerhart making—

Mr. GOLDMAN. That he's government sponsored.

Mr. WOLPE. That's correct.

Mr. GOLDMAN. That's right. When he comes on his tours to the United States, that is not true.

Mr. WOLPE. Well—

Mr. GOLDMAN. He comes here to represent—Gathsa Buthelezi's very clear about his future aim for South Africa. He wants the same thing the ANC wants, exactly. Now, no South African Government official wants that point of view.

Mr. WOLPE. The only point that I think needs to be recorded here is that there has been a tendency in this country for us to seek out those voices that we want to hear rather than those voices that are the most representative of—

Mr. GOLDMAN. Right here, we are only wanting to hear one point of view, as well, right now, and that is the ANC's point of view. And they say, Gathsa Buthelezi's a puppet, so do we, like parrots.

Now, just one more point, Mr. Bilbray, if I may, with regard to the poll that Professor Gerhart mentioned. There was a critical "if" conditional clause attached to that poll, and that is, if apartheid can be brought to its knees soon, would people be willing to lose their jobs. That's a key, if.

If one put the question to them without knowing what the consequences may be, I don't know whether we'd get 43 percent of the people saying that they'd be willing to leave their jobs. I just don't know, that's all.

Mr. BILBRAY. In your opinion earlier you said you thought it was like 6 years or more it would take, and some other person has said 30 years. Maybe it was—

Mr. GOLDMAN. I said 6 years would be a useful time for the pro-sanctions people in this country to give themselves. That's the time they gave the constructive engagement policy to bring down apartheid. So to be fair, give themselves 6 years.

Ms. VOORHES. I just had a thought on the question of polling data. Over the last 2 or 3 years, three disparate organizations have conducted polls into urban black attitudes toward sanctions, and specifically corporate disinvestment.

One was by Lawrence Schlemmer, who is closely affiliated with Inkatha. One was by the Human Sciences Research Council, which is a government-funded research organization. And the third was by Mark Orkin, a sociologist sympathetic to the United Democratic Front, who worked in conjunction with Fatima Meer's Institute of Black Research.

All of the polls in one way or another uncovered a strong minority of urban Africans—about 25 percent—who were in favor of foreign companies withdrawing from South Africa.

After that point, the polling results differ. It appears that quite a few Africans feel very ambivalent toward foreign companies. They don't feel that foreign companies have been working hard enough to end apartheid, but at the same time, there's not, at least in these polling results, a strong feeling that all U.S. companies should withdraw.

Mr. GREENBERG. Let me just make a brief methodological point, and a general point. This is a society where the issue we're addressing cannot be openly debated in the press. I don't believe we should be looking at those polls believing that we're dealing with some honest reading of assessments, and therefore, I don't put a lot of store in the differences between the Orkin Survey and the Schlemmer Survey, which come out on opposite sides.

What these surveys do is share in the funding that political concerns rank almost even with economic concerns amongst a population that suffers under very, very great economic distress. I think we ought to recognize that the majority of the African population is very politicized, focused on political change, and will take that into account when dealing with fairly basic economic questions.

Mr. WOLPE. Well, it should be said, if I may just add one additional note here, I mean, I don't know anyone who has ever argued that economic sanctions would not have impacts upon black work-

ers who are within those industries against which the sanctions are targeted. That's always been understood. And those black leaders, incidentally, with reference to the trade movement, I think is instructive because the two largest trade union federations that contain the employees that would be most likely to be impacted have been consistently in support of sanctions.

And but the point here is that at least that has been asserted by those black leaders within the urban political context of South Africa has been not that sanctions would not mean pain and hardship, but that the short term economic costs to those blacks would be far less than the long term costs of a protracted struggle which would yield not only economic loss but enormous loss of life.

It is the same kind of analysis that has been undertaken with respect to the American Civil Rights struggle in which we will recall I think that there are many that warned against black consumer boycotts and other kinds of economic action on the grounds that it was going to hurt blacks employed in those firms in those communities against whom the boycotts were directed.

And in the end, the leadership of the civil rights movement argued and was able to persuade very large numbers of people that those short term costs were well worth the long term gain of democratization and full civil rights within the United States.

It is the same argument, I would suggest, that has been applied every time we've applied sanctions in other countries. I assume that we were aware when we applied sanctions against Poland, or in the Afghanistan situation or against the Soviet Union at different points, or when we bombed Libya and took other kinds of economic measures against Libya, that there were going to be civilian costs, economic and in some cases even beyond economic costs.

But the judgments were made that the foreign policy objectives of the United States, the national interests of the United States and the process of change that we wished to enhance in some of these countries all outweighed those short term costs in the interests of long term benefits.

And again, I come back to the proposition I haven't yet heard addressed by any of the previous members of the Administration's panel all afternoon, is why is it that somehow we turn to the subject of South Africa, and we enter into a very different kind of dialogue on the subject of sanctions? Are we really suggesting that we care far more deeply about the cost to the black population of South Africa, than we care about the cost to the Polish population in Poland when we applied sanctions there?

Is that really the case?

Would any one care—Mr. Goldman, do you have a response to that?

Mr. GOLDMAN. Let me say one thing in response to that, really. I don't personally think we should if caring is the issue here. If caring is the issue, I've never quite understood how caring translates into international politics and I'm not sure that is indeed what goes on here, because I mean, if we cared truly about all the oppressed people all over the world and applied economic sanctions everywhere, we would simply have to give up international trade for all intents and purposes.

So we do make very selective judgments about where we impose sanctions and where we don't.

The last I heard of Solidarity—the reason that we imposed sanctions presumably against Poland—has not in fact been recognized as a trade union which in South Africa as we've heard today, in fact, trade unions are allowed to exist. And the last I also heard, those sanctions that we imposed against Poland in order to encourage the recognition of Solidarity have been largely withdrawn.

I also, and I'm not too sure what particular economic sanctions supposedly we've imposed against the Soviet Union, at the same time that we were withdrawing landing rights for South African Airways, I understood that Aeroflot was going to be regranted landing rights without ever having done anything in Afghanistan other than killing more people.

So I'm not particularly sure what point you're trying to make, precisely. As far as I'm able to understand it, sanctions don't work; we're unable to achieve what we actually want to achieve with sanctions anywhere. Because certainly there's no greater justice in the Soviet Union today than there was at any time we supposedly imposed sanctions there.

We've been unable to achieve anything with regard to sanctions on the Sandinista regime.

Mr. WOLPE. I wasn't talking about—but I was talking about that I find it interesting that we have a very different kind of dialogue discussion on this subject than when we turn to these other situations.

And was wondering why.

Mr. GOLDMAN. Well, I'll give you one answer, only. And that is in the end—and this is not an answer that will make people feel good—that's in a way not what we're about. In the end, one of the distinctions I think we have to make between the repressive regime of South Africa and other repressive regimes of the Eastern Bloc and the Soviet Union is that the fundamental difference is that however shocking South Africa and apartheid is, it does not attempt to export its system around the globe in competition with ours.

It does not do that. That's one of its saving graces, if you will. I mean, one of the few things one can say about it. The Soviet Union, however, as a matter of policy, and its allies, as a matter of policy, attempts to export totalitarian communism everywhere in the world. And therefore in direct competition with us.

They are our enemy, if we should put it bluntly. I mean, I know we're not supposed to use language of that sort in these enlightened days, but that is one reason why we make a distinction.

Mr. WOLPE. Anyone else care to make any remarks?

Ms. GERHART. Well, if we're weighing in with the facts in polls and statistics on the subject of sanctions and do they work, it might be of interest to note that in academic studies of sanctions in many different contexts, historically and around the world, the outcomes are successful in the sense that the intended effects are to some considerable extent achieved, in something like one-third of the cases historically that sanctions have been applied.

Now, again, it's either the glass is a third full or its two-thirds empty, but I think the defenders of sanctions would say that that's

a good enough track record that you ought to give it a try, unless you can propose something better. And I don't think sitting here today we've heard anything better proposed. That's my view.

Mr. WOLFE. OK.

Well, let me thank all of you for your testimony and also for your long wait in anticipation of this afternoon's session. I regret the rescheduling, or at least the scheduling complications that arose this morning.

But your testimony has been most helpful and I thank you again for your assistance.

[Whereupon, at 5:54 p.m., the subcommittee was adjourned.]

## APPENDIX 1

### LEGISLATIVE DATES PERTINENT TO THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986

June 18	House passes H.R. 4868 by voice vote.
August 15	Senate passes H.R. 4868 substitute 84-14
September 12	House accepts Senate version 308-77, adding rule on pre-emption.
September 15	H.R. 4868 goes to President.
September 26	President vetoes bill.
September 29	House overrides President's veto 313-83.
October 2	Senate overrides President's veto 78-21. H.R. 4868, now Public Law 99-440, takes effect. Prohibitions on imports of Krugerrands, military articles, parastatal products (except agricultural), agricultural and food commodities (and sugar), iron and steel, on exports of computers to apartheid-enforcing agencies, on exports of items on Munitions List, crude oil and petroleum products, on loans to South African Government, on nuclear trade with S.A., on U.S. Government procurement from S.A. parastatals, on U.S. cooperation with S.A. armed forces, on promotion of tourism in S.A., and on promotion if U.S. trade with S.A., take effect.
October 12	Air-link prohibitions take effect.
November 2	Commerce report on average imports of Eastern bloc strategic minerals due.
November 16	New investment and S.A. Bank account provisions take effect.
December 1	State report on conditions in "homelands" due.
January 1, 1987	Uranium, coal and textile prohibitions take effect. President's report on imports of South African strategic minerals and on communist activities in South Africa due. State's report on assistance to disadvantaged black South Africans over next five years due.
March 31	President's report on arms embargo violators

due.

April 1

Commodities produced, marketed, exported etc. by South African parastatals, ordered before August 15, 1986, must arrive by this date. President's report on international coordination vs. South Africa, on relations of industrial democracies with South Africa, and on economy of, and U.S. assistance to, front-line States due. Treasury report on U.S. bank accounts of South African nationals due. Att'y General's report on violations of Foreign Agents Registration Act by reps of gov'ts or opposition movements in Subsaharan Africa (including the ANC) due.

October 2, 1987

President's report on progress by South African Government due.

## APPENDIX 2

## COMPREHENSIVE ANTI-APARTHEID ACT OF 1986

Public Law 99-440  
99th Congress

## An Act

Oct. 2, 1986  
[H.R. 4868]

To prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Comprehensive  
Anti-Apartheid  
Act of 1986.  
Human rights.  
Terrorism.  
22 USC 5001  
note.

## SHORT TITLE

SECTION 1. This Act may be cited as the "Comprehensive Anti-Apartheid Act of 1986".

## TABLE OF CONTENTS

Sec. 2. The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.
- Sec. 4. Purpose.

## TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID

- Sec. 101. Policy toward the Government of South Africa.
- Sec. 102. Policy toward the African National Congress, etc.
- Sec. 103. Policy toward the victims of apartheid.
- Sec. 104. Policy toward other countries in Southern Africa.
- Sec. 105. Policy toward "frontline" states.
- Sec. 106. Policy toward a negotiated settlement.
- Sec. 107. Policy toward international cooperation on measures to end apartheid.
- Sec. 108. Policy toward necklacing.
- Sec. 109. United States Ambassador to meet with Nelson Mandela.
- Sec. 110. Policy toward the recruitment and training of black South Africans by United States employers.

## TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID

- Sec. 201. Scholarships for the victims of apartheid.
- Sec. 202. Human rights fund.
- Sec. 203. Expanding participation in the South African economy.
- Sec. 204. Export-Import Bank of the United States.
- Sec. 205. Labor practices of the United States Government in South Africa.
- Sec. 206. Welfare and protection of the victims of apartheid employed by the United States.
- Sec. 207. Employment practices of United States nationals in South Africa.
- Sec. 208. Code of Conduct.
- Sec. 209. Prohibition on assistance.
- Sec. 210. Use of the African Emergency Reserve.
- Sec. 211. Prohibition on assistance to any person or group engaging in "necklacing".
- Sec. 212. Participation of South Africa in agricultural export credit and promotion programs.

## TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

- Sec. 301. Prohibition on the importation of krugerrands.
- Sec. 302. Prohibition on the importation of military articles.
- Sec. 303. Prohibition on the importation of products from parastatal organizations.
- Sec. 304. Prohibition on computer exports to South Africa.

## CONCLUSION

Much public policy debate is carried on in an atmosphere devoid of solid fact. Arguments are made and predictions offered, action is taken, and then attention shifts to something else. Rarely are policymakers given a chance to see very quickly the consequences of the policy decisions they have made. Only occasionally is there a chance to study the results of certain policies and learn from them. This is the case with the South Africa sanctions and disinvestment debate.

**Bottom Line.** The bottom line is simple: Western sanctions against Pretoria have done nothing to bring Pretoria closer to eradicating apartheid. In fact, Pretoria is farther away. The promising liberalizing trends throughout the key institutions of Afrikanerdom—the church, the intelligentsia, the Broederbond, the government—have been set back. The object of U.S. and Western policy should not be sanctions but an effort to convince the Afrikaners that they stand to gain more from abolishing apartheid and rejoining the community of nations than they do by going back into their defensive laager.

To be effective, U.S. policy must take this basic reality into account. The goal of U.S. policy, as stated by both the Reagan Administration and the Congress (through the Comprehensive Anti-Apartheid Act), is to foster an atmosphere in South Africa conducive to negotiations between Pretoria and legitimate representatives of the black majority. As long as the U.S. appeared to side with Afrikaners against the blacks, it had no credibility in opposition circles as an honest broker. But by reversing itself with the imposition of sanctions and high-level diplomatic contacts with the African National Congress, the U.S. has destroyed its credibility with the Afrikaners without gaining any credibility in the eyes of the blacks. Instead, the U.S. must play a carefully structured role, walking a fine line between the two. The Administration should be seen by all sides in South Africa not to favor any one group over another, but to favor negotiations with all.

Pretoria, understandably, has read the mood of the Congress—which it now correctly deems to be controlling U.S. policy toward southern Africa—as harsh. Pretoria has reacted by backtracking on the reform process. In addition to the crackdown on the Group Areas Act, P.W. Botha has announced his intention to terminate external funding for extraparliamentary opposition groups. The practical effect of the second measure will be to eliminate Western assistance to government opponents. The U.S. strongly should urge Pretoria to renounce such moves and resume its reform process.

**Resisting Further Sanctions.** Toward this end, the U.S. must reestablish its credibility with Pretoria. To do so, it must resist congressional calls for further sanctions against South Africa and must make sure that the South African government knows it is doing so. Ronald Reagan should take the evidence of the consequences of sanctions and use it to educate the Congress when it pressures him later this summer. He was right to oppose sanctions last year, and now he has the evidence to back up his position.

The Reagan Administration must learn the lesson of sanctions against Pretoria, and must teach the Congress: when dealing with Afrikaners, carrots work much better than sticks. The next time sanctions legislation is discussed, a clear line must be drawn between those who are sincerely trying to achieve positive change in South Africa—those who have studied the situation well enough to have learned the lessons of sanctions—and those who are merely posturing for a constituency in the U.S. To remain intellectually honest, those who are sincerely interested in fostering positive change in South Africa must drop the sanctions arrow from their quiver.

William W. Pascoe  
Policy Analyst

- Sec. 305. Prohibition on loans to the Government of South Africa.
- Sec. 306. Prohibition on air transportation with South Africa.
- Sec. 307. Prohibitions on nuclear trade with South Africa.
- Sec. 308. Government of South Africa bank accounts.
- Sec. 309. Prohibition on importation of uranium and coal from South Africa.
- Sec. 310. Prohibition on new investment in South Africa.
- Sec. 311. Termination of certain provisions.
- Sec. 312. Policy toward violence or terrorism.
- Sec. 313. Termination of tax treaty and protocol.
- Sec. 314. Prohibition on United States Government procurement from South Africa.
- Sec. 315. Prohibition on the promotion of United States tourism in South Africa.
- Sec. 316. Prohibition on United States Government assistance to, investment in, or subsidy for trade with, South Africa.
- Sec. 317. Prohibition on sale or export of items on Munition List.
- Sec. 318. Munitions list sales, notification.
- Sec. 319. Prohibition on importation of South African agricultural products and food.
- Sec. 320. Prohibition on importation of iron and steel.
- Sec. 321. Prohibition on exports of crude oil and petroleum products.
- Sec. 322. Prohibition on cooperation with the armed forces of South Africa.
- Sec. 323. Prohibition on sugar imports.

#### TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

- Sec. 401. Negotiating authority.
- Sec. 402. Limitation on imports from other countries.
- Sec. 403. Private right of action.

#### TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

- Sec. 501. Additional measures.
- Sec. 502. Lifting of prohibitions.
- Sec. 503. Study of health conditions in the "homelands" areas of South Africa.
- Sec. 504. Reports on South African imports.
- Sec. 505. Study and report on the economy of southern Africa.
- Sec. 506. Report on relations between other industrialized democracies and South Africa.
- Sec. 507. Study and report on deposit accounts of South African nationals in United States banks.
- Sec. 508. Study and report on the violation of the international embargo on sale and export of military articles to South Africa.
- Sec. 509. Report on Communist activities in South Africa.
- Sec. 510. Prohibition on the importation of Soviet gold coins.
- Sec. 511. Economic support for disadvantaged South Africans.
- Sec. 512. Report on the African National Congress.

#### TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

- Sec. 601. Regulatory authority.
- Sec. 602. Congressional priority procedures.
- Sec. 603. Enforcement and penalties.
- Sec. 604. Applicability to evasions of Act.
- Sec. 605. Construction of Act.
- Sec. 606. State or local anti-apartheid laws, enforce.

#### DEFINITIONS

##### SEC. 3. As used in this Act—

- (1) the term "Code of Conduct" refers to the principles set forth in section 208(a);
- (2) the term "controlled South African entity" means—
  - (A) a corporation, partnership, or other business association or entity organized in South Africa and owned or controlled, directly or indirectly, by a national of the United States; or
  - (B) a branch, office, agency, or sole proprietorship in South Africa of a national of the United States;
- (3) the term "loan"—
  - (A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or

22 USC 5001.

guarantee of the obligation of another to repay an extension of funds or credit, including—

- (i) overdrafts,
- (ii) currency swaps,
- (iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act,
- (iv) the purchase of a loan made by another person,
- (v) the sale of financial assets subject to an agreement to repurchase, and
- (vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity, and

(B) does not include—

- (i) normal short-term trade financing, as by letters of credit or similar trade credits;
- (ii) sales on open account in cases where such sales are normal business practice; or
- (iii) rescheduling of existing loans, if no new funds or credits are thereby extended to a South African entity or the Government of South Africa;

(4) the term “new investment”—

(A) means—

- (i) a commitment or contribution of funds or other assets, and
- (ii) a loan or other extension of credit, and

(B) does not include—

- (i) the reinvestment of profits generated by a controlled South African entity into that same controlled South African entity or the investment of such profits in a South African entity;
- (ii) contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or
- (iii) the ownership or control of a share or interest in a South African entity or a controlled South African entity or a debt or equity security issued by the Government of South Africa or a South African entity before the date of enactment of this Act, or the transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a South African entity, a controlled South African entity, or the Government of South Africa;

(5) the term “national of the United States” means—

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States or is an alien lawfully admitted for permanent residence in the United States, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); or

(B) a corporation, partnership, or other business association which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia;

(6) the term “South Africa” includes—

(A) the Republic of South Africa;

(B) any territory under the Administration, legal or illegal, of South Africa; and

(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana Ciskei, and Venda; and

(7) the term "South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa; or

(B) a branch, office, agency, or sole proprietorship in South Africa of a person that resides or is organized outside South Africa; and

(8) the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

#### PURPOSE

SEC. 4. The purpose of this Act is to set forth a comprehensive and complete framework to guide the efforts of the United States in helping to bring an end to apartheid in South Africa and lead to the establishment of a nonracial, democratic form of government. This Act sets out United States policy toward the Government of South Africa, the victims of apartheid, and the other states in southern Africa. It also provides the President with additional authority to work with the other industrial democracies to help end apartheid and establish democracy in South Africa.

22 USC 5002.

### TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID

#### POLICY TOWARD THE GOVERNMENT OF SOUTH AFRICA

SEC. 101. (a) United States policy toward the Government of South Africa shall be designed to bring about reforms in that system of government that will lead to the establishment of a nonracial democracy.

22 USC 5011.

(b) The United States will work toward this goal by encouraging the Government of South Africa to—

(1) repeal the present state of emergency and respect the principle of equal justice under law for citizens of all races;

(2) release Nelson Mandela, Govan Mbeki, Walter Sisulu, black trade union leaders, and all political prisoners;

(3) permit the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) establish a timetable for the elimination of apartheid laws;

(5) negotiate with representatives of all racial groups in South Africa the future political system in South Africa; and

(6) end military and paramilitary activities aimed at neighboring states.

(c) The United States will encourage the actions set forth in subsection (b) through economic, political, and diplomatic measures as set forth in this Act. The United States will adjust its actions toward the Government of South Africa to reflect the progress or lack of progress made by the Government of South Africa in meeting the goal set forth in subsection (a).

Nelson Mandela.  
Govan Mbeki.  
Walter Sisulu.

## POLICY TOWARD THE AFRICAN NATIONAL CONGRESS, ETC.

Pan African  
Congress.  
22 USC 5012.

SEC. 102. (a) United States policy toward the African National Congress, the Pan African Congress, and their affiliates shall be designed to bring about a suspension of violence that will lead to the start of negotiations designed to bring about a nonracial and genuine democracy in South Africa.

(b) The United States shall work toward this goal by encouraging the African National Congress and the Pan African Congress, and their affiliates, to—

(1) suspend terrorist activities so that negotiations with the Government of South Africa and other groups representing black South Africans will be possible;

(2) make known their commitment to a free and democratic post-apartheid South Africa;

(3) agree to enter into negotiations with the South African Government and other groups representing black South Africans for the peaceful solution of the problems of South Africa;

(4) reexamine their ties to the South African Communist Party.

(c) The United States will encourage the actions set forth in subsection (b) through political and diplomatic measures. The United States will adjust its actions toward the Government of South Africa not only to reflect progress or lack of progress made by the Government of South Africa in meeting the goal set forth in subsection 101(a) but also to reflect progress or lack of progress made by the ANC and other organizations in meeting the goal set forth in subsection (a) of this section.

## POLICY TOWARD THE VICTIMS OF APARTHEID

22 USC 5013.

SEC. 103. (a) The United States policy toward the victims of apartheid is to use economic, political, diplomatic, and other effective means to achieve the removal of the root cause of their victimization, which is the apartheid system. In anticipation of the removal of the system of apartheid and as a further means of challenging that system, it is the policy of the United States to assist these victims of apartheid as individuals and through organizations to overcome the handicaps imposed on them by the system of apartheid and to help prepare them for their rightful roles as full participants in the political, social, economic, and intellectual life of their country in the post-apartheid South Africa envisioned by this Act.

(b) The United States will work toward the purposes of subsection (a) by—

(1) providing assistance to South African victims of apartheid without discrimination by race, color, sex, religious belief, or political orientation, to take advantage of educational opportunities in South Africa and in the United States to prepare for leadership positions in a post-apartheid South Africa;

(2) assisting victims of apartheid;

(3) aiding individuals or groups in South Africa whose goals are to aid victims of apartheid or foster nonviolent legal or political challenges to the apartheid laws;

(4) furnishing direct financial assistance to those whose non-violent activities had led to their arrest or detention by the

South African authorities and (B) to the families of those killed by terrorist acts such as "necklacings";

(5) intervening at the highest political levels in South Africa to express the strong desire of the United States to see the development in South Africa of a nonracial democratic society;

(6) supporting the rights of the victims of apartheid through political, economic, or other sanctions in the event the Government of South Africa fails to make progress toward the removal of the apartheid laws and the establishment of such democracy; and

(7) supporting the rights of all Africans to be free of terrorist attacks by setting a time limit after which the United States will pursue diplomatic and political measures against those promoting terrorism and against those countries harboring such groups so as to achieve the objectives of this Act.

#### POLICY TOWARD OTHER COUNTRIES IN SOUTHERN AFRICA

SEC. 104. (a) The United States policy toward the other countries in the Southern African region shall be designed to encourage democratic forms of government, full respect for human rights, an end to cross-border terrorism, political independence, and economic development. 22 USC 5014.

(b) The United States will work toward the purposes of subsection (a) by—

(1) helping to secure the independence of Namibia and the establishment of Namibia as a nonracial democracy in accordance with appropriate United Nations Security Council resolutions; Namibia.

(2) supporting the removal of all foreign military forces from the region;

(3) encouraging the nations of the region to settle differences through peaceful means;

(4) promoting economic development through bilateral and multilateral economic assistance targeted at increasing opportunities in the productive sectors of national economies, with a particular emphasis on increasing opportunities for non-governmental economic activities;

(5) encouraging, and when necessary, strongly demanding, that all countries of the region respect the human rights of their citizens and noncitizens residing in the country, and especially the release of persons persecuted for their political beliefs or detained without trial;

(6) encouraging, and when necessary, strongly demanding that all countries of the region take effective action to end cross-border terrorism; and

(7) providing appropriate assistance, within the limitations of American responsibilities at home and in other regions, to assist regional economic cooperation and the development of interregional transportation and other capital facilities necessary for economic growth. Transportation.

#### POLICY TOWARD "FRONTLINE" STATES

SEC. 105. It is the sense of the Congress that the President should discuss with the governments of the African "frontline" states the President of U.S. Transportation. 22 USC 5015.

effects on them of disruptions in transportation or other economic links through South Africa and of means of reducing those effects.

POLICY TOWARD A NEGOTIATED SETTLEMENT

22 USC 5016.

SEC. 106. (a)(1) United States policy will seek to promote negotiations among representatives of all citizens of South Africa to determine a future political system that would permit all citizens to be full participants in the governance of their country. The United States recognizes that important and legitimate political parties in South Africa include several organizations that have been banned and will work for the unbanning of such organizations in order to permit legitimate political viewpoints to be represented at such negotiations. The United States also recognizes that some of the organizations fighting apartheid have become infiltrated by Communists and that Communists serve on the governing boards of such organizations.

Communists.

President of U.S.  
Communists.

(2) To this end, it is the sense of the Congress that the President, the Secretary of State, or other appropriate high-level United States officials should meet with the leaders of opposition organizations of South Africa, particularly but not limited to those organizations representing the black majority. Furthermore, the President, in concert with the major allies of the United States and other interested parties, should seek to bring together opposition political leaders with leaders of the Government of South Africa for the purpose of negotiations to achieve a transition to the post-apartheid democracy envisioned in this Act.

(b) The United States will encourage the Government of South Africa and all participants to the negotiations to respect the right of all South Africans to form political parties, express political opinions, and otherwise participate in the political process without fear of retribution by either governmental or nongovernmental organizations. It is the sense of the Congress that a suspension of violence is an essential precondition for the holding of negotiations. The United States calls upon all parties to the conflict to agree to a suspension of violence.

(c) The United States will work toward the achievement of agreement to suspend violence and begin negotiations through coordinated actions with the major Western allies and with the governments of the countries in the region.

Great Britain.  
Canada.  
France.  
Italy.  
Japan.  
West Germany.

(d) It is the sense of the Congress that the achievement of an agreement for negotiations could be promoted if the United States and its major allies, such as Great Britain, Canada, France, Italy, Japan, and West Germany, would hold a meeting to develop a four-point plan to discuss with the Government of South Africa a proposal for stages of multilateral assistance to South Africa in return for the Government of South Africa implementing—

Nelson Mandela.

(1) an end to the state of emergency and the release of the political prisoners, including Nelson Mandela;

African National  
Congress.  
Pan African  
Congress.  
Black  
Consciousness  
Movement.

(2) the unbanning of the African National Congress, the Pan African Congress, the Black Consciousness Movement, and all other groups willing to suspend terrorism and to participate in negotiations and a democratic process;

(3) a revocation of the Group Areas Act and the Population Registration Act and the granting of universal citizenship to all South Africans, including homeland residents; and

(4) the use of the international offices of a third party as an intermediary to bring about negotiations with the object of the establishment of power-sharing with the black majority.

**POLICY TOWARD INTERNATIONAL COOPERATION ON MEASURES TO END APARTHEID**

**SEC. 107. (a) The Congress finds that—**

22 USC 5017.

(1) international cooperation is a prerequisite to an effective anti-apartheid policy and to the suspension of terrorism in South Africa; and

(2) the situation in South Africa constitutes an emergency in international relations and that action is necessary for the protection of the essential security interests of the United States.

(b) Accordingly, the Congress urges the President to seek such cooperation among all individuals, groups, and nations.

**POLICY TOWARD NECKLACING**

**SEC. 108. It is the sense of the Congress that the African National Congress should strongly condemn and take effective actions against the execution by fire, commonly known as "necklacing", of any person in any country.**

African National Congress.  
22 USC 5018.

**UNITED STATES AMBASSADOR TO MEET WITH NELSON MANDELA**

**SEC. 109. It is the sense of the Senate that the United States Ambassador should promptly make a formal request to the South African Government for the United States Ambassador to meet with Nelson Mandela.**

Nelson Mandela.  
22 USC 5019.

**POLICY TOWARD THE RECRUITMENT AND TRAINING OF BLACK SOUTH AFRICANS BY UNITED STATES EMPLOYERS**

**SEC. 110. (a) The Congress finds that—**

(1) the policy of apartheid is abhorrent and morally repugnant;

22 USC 5020.

(2) the United States believes strongly in the principles of democracy and individual freedoms;

(3) the United States endorses the policy of political participation of all citizens;

(4) a free, open, and vital economy is a primary means for achieving social equality and economic advancement for all citizens; and

(5) the United States is committed to a policy of securing and enhancing human rights and individual dignity throughout the world.

(b) It is the sense of the Congress that United States employers operating in South Africa are obliged both generally to actively oppose the policy and practices of apartheid and specifically to engage in recruitment and training of black and colored South Africans for management responsibilities.

## TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID

## SCHOLARSHIPS FOR THE VICTIMS OF APARTHEID

22 USC 2151c.

SEC. 201. (a) Section 105(b) of the Foreign Assistance Act of 1961 is amended—

(1) by inserting “(1)” after “(b)”; and

(2) by adding at the end thereof the following new paragraph:

Education.  
Schools and  
colleges.

“(2)(A)(i) Of the amounts authorized to be appropriated to carry out this section for the fiscal years 1987, 1988, and 1989, not less than \$4,000,000 shall be used in each such fiscal year to finance education, training, and scholarships for the victims of apartheid, including teachers and other educational professionals, who are attending universities and colleges in South Africa. Amounts available to carry out this subparagraph shall be provided in accordance with the provisions of section 802(c) of the International Security and Development Cooperation Act of 1985.

99 Stat. 260.

“(ii) Funds made available for each such fiscal year for purposes of chapter 4 of part II of this Act may be used to finance such education, training, and scholarships in lieu of an equal amount made available under this subparagraph.

22 USC 2346.

“(B)(i) In addition to amounts used for purposes of subparagraph (A), the agency primarily responsible for administering this part, in collaboration with other appropriate departments or agencies of the United States, shall use assistance provided under this section or chapter 4 of part II of this Act to finance scholarships for students pursuing secondary school education in South Africa. The selection of scholarship recipients shall be by a nationwide panel or by regional panels appointed by the United States chief of diplomatic mission to South Africa.

“(ii) Of the amounts authorized to be appropriated to carry out this section and chapter 4 of part II of this Act for the fiscal years 1987, 1988, and 1989, up to an aggregate of \$1,000,000 may be used in each such fiscal year for purposes of this subparagraph.

“(C)(i) In addition to the assistance authorized in subparagraph (A), the agency primarily responsible for administering this part shall provide assistance for inservice teacher training programs in South Africa through such nongovernmental organizations as TOPS or teachers’ unions.

“(ii) Of the amounts authorized to be appropriated to carry out this section and chapter 4 of part II of this Act, up to an aggregate of \$500,000 for the fiscal year 1987 and up to an aggregate of \$1,000,000 for the fiscal year 1988 may be used for purposes of this subparagraph, subject to standard procedures for project review and approval.”

22 USC 2151  
note.  
22 USC 2151c.

(b) The Foreign Assistance Act of 1961 is amended by inserting after section 116 the following new section:

“SEC. 117. ASSISTANCE FOR DISADVANTAGED SOUTH AFRICANS.—In providing assistance under this chapter or under chapter 4 of part II of this Act for disadvantaged South Africans, priority shall be given to working with and through South African nongovernmental organizations whose leadership and staff are selected on a nonracial basis, and which have the support of the disadvantaged communities being served. The measure of this community support shall be the willingness of a substantial number of disadvantaged persons to participate in activities sponsored by these organizations. Such organizations to which such assistance may be provided include the

Educational Opportunities Council, the South African Institute of Race Relations, READ, professional teachers' unions, the Outreach Program of the University of the Western Cape, the Funda Center in Soweto, SACHED, UPP Trust, TOPS, the Wilgespruit Fellowship Center (WFC), and civic and other organizations working at the community level which do not receive funds from the Government of South Africa."

HUMAN RIGHTS FUND

SEC. 202. (a) Section 116(e)(2)(A) of the Foreign Assistance Act of 1961 is amended— 22 USC 2151n.

(1) by striking out "1984 and" and inserting in lieu thereof "1984"; and

(2) by inserting after "1985" a comma and the following: "and \$1,500,000 for the fiscal year 1986 and for each fiscal year thereafter".

(b) Section 116 of such Act is amended by adding at the end thereof the following new subsection:

"(f)(1) Of the funds made available to carry out subsection (e)(2)(A) for each fiscal year, not less than \$500,000 shall be used for direct legal and other assistance to political detainees and prisoners and their families, including the investigation of the killing of protesters and prisoners, and for support for actions of black-led community organizations to resist, through nonviolent means, the enforcement of apartheid policies such as—

"(A) removal of black populations from certain geographic areas on account of race or ethnic origin,

"(B) denationalization of blacks, including any distinctions between the South African citizenships of blacks and whites,

"(C) residence restrictions based on race or ethnic origin,

"(D) restrictions on the rights of blacks to seek employment in South Africa and to live wherever they find employment in South Africa, and

"(E) restrictions which make it impossible for black employees and their families to be housed in family accommodations near their place of employment.

"(2)(A) No grant under this subsection may exceed \$100,000.

"(B) The average of all grants under this paragraph made in any fiscal year shall not exceed \$70,000.

"(g) Of the funds made available to carry out subsection (e)(2)(A) for each fiscal year, \$175,000 shall be used for direct assistance to families of victims of violence such as 'necklacing' and other such inhumane acts. An additional \$175,000 shall be made available to black groups in South Africa which are actively working toward a multi-racial solution to the sharing of political power in that country through nonviolent, constructive means."

Employment and unemployment.

Housing.

Grants.

EXPANDING PARTICIPATION IN THE SOUTH AFRICAN ECONOMY

SEC. 203. (a) The Congress declares that—

(1) the denial under the apartheid laws of South Africa of the rights of South African blacks and other nonwhites to have the opportunity to participate equitably in the South African economy as managers or owners of, or professionals in, business enterprises, and

22 USC 5031.

(2) the policy of confining South African blacks and other nonwhites to the status of employees in minority-dominated businesses,

is an affront to the values of a free society.

(b) The Congress hereby—

*Post*, p. 1097.

(1) applauds the commitment of nationals of the United States adhering to the Code of Conduct to assure that South African blacks and other nonwhites are given assistance in gaining their rightful place in the South African economy; and

(2) urges the United States Government to assist in all appropriate ways the realization by South African blacks and other nonwhites of their rightful place in the South African economy.

Business and industry.

(c) Notwithstanding any other provision of law, the Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable, in procuring goods or services, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by South African blacks or other nonwhite South Africans.

#### EXPORT-IMPORT BANK OF THE UNITED STATES

12 USC 635.

Sec. 204. Section 2(b)(9) of the Export-Import Bank Act of 1945 is amended—

(1) by striking out “(9) In” and inserting in lieu thereof “(9)(A)

Except as provided in subparagraph (B), in”; and

(2) by adding at the end thereof the following:

Business and industry.

“(B) The Bank shall take active steps to encourage the use of its facilities to guarantee, insure, extend credit, or participate in the extension of credit to business enterprises in South Africa that are majority owned by South African blacks or other nonwhite South Africans. The certification requirement contained in clause (c) of subparagraph (A) shall not apply to exports to or purchases from business enterprises which are majority owned by South African blacks or other nonwhite South Africans.”.

#### LABOR PRACTICES OF THE UNITED STATES GOVERNMENT IN SOUTH AFRICA

Employment and unemployment.  
22 USC 5032.

Sec. 205. (a) It is the sense of the Congress that the labor practices used by the United States Government—

(1) for the direct hire of South Africans,

(2) for the reimbursement out of official residence funds of South Africans and employees of South African organizations for their long-term employment services on behalf of the United States Government, and

Contracts.

(3) for the employment services of South Africans arranged by contract,

should represent the best of labor practices in the United States and should serve as a model for the labor practices of nationals of the United States in South Africa.

(b) The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall promptly take, without regard to any provision of law, the necessary steps to ensure that the labor practices applied to the employment services described in paragraphs (1) through (3) of subsection (a) are governed by the Code of Conduct. Nothing in this

*Post*, p. 1097.

Mr. WOLPE. Thank you very much, Mr. Roth.

We now turn to the first panel of witnesses.

I should explain to the witnesses, and also to our audience, that we were delayed, we had originally planned to get today's hearing started at 10:00 this morning, but were preempted by the Full Committee's closed hearing with Mr. Weinberger, and the Joint Chiefs of Staff on the questions in the Persian Gulf.

So we've going to try to accomplish both this panel and the following panel under very tight time constraints.

In addition, the State Department Authorization bill is on the Floor. There are some African-related amendments that will be part of the consideration, and so I and other members may have to absent ourselves, although we will try to keep the hearing going as best we can, during the consideration of the State Department Authorization bill.

For all of these reasons, though, we're going to ask our witnesses to really attempt to adhere to the five-minute time limit that we will impose upon ourselves, as well as upon our witnesses, and I will, once we secure the technology to allow the lights to turn on and off, we'll try to use the lighting mechanism in front of you as your signal.

With that, I look forward to receiving the testimony first, of Dr. Crocker.

**STATEMENT OF HON. CHESTER A. CROCKER, ASSISTANT  
SECRETARY FOR AFRICAN AFFAIRS, DEPARTMENT OF STATE**

Dr. CROCKER. Thank you very much, Mr. Chairman, for this opportunity to testify about the implementation of the measures called for in the Comprehensive Anti-Apartheid Act of 1986.

My colleagues from other agencies, and I, representing the State Department, stand ready to answer any questions you and other representatives have on how we have given effect to the provisions of that Act.

As you know, the President signed an Executive Order on October 27, 1986, authorizing the appropriate departments and agencies of government to take all steps necessary consistent with the Constitution to implement the requirements of Public Law 99-440. Several functions were reserved for the Department of State in that Presidential Executive Order.

What I propose to do briefly in my testimony is to discuss in general terms, what the Department has done to implement the law, as instructed by the President.

Secretary Shultz' instructions to me about putting this law into effect were categorical: implement it faithfully, period. We have done so.

Under terms of the President's Executive Order, the State Department was instructed to implement the following provisions of the law, and my testimony spells out in detail, Mr. Chairman, exactly what they are, so in the interests of time, I will not go through all of them.

A number of reports to be prepared, nearly all of which have been prepared and submitted.

section shall be construed to grant any employee of the United States the right to strike.

**WELFARE AND PROTECTION OF VICTIMS OF APARTHEID BY THE UNITED STATES**

SEC. 206. (a) The Secretary of State shall acquire, through lease or purchase, residential properties in the Republic of South Africa that shall be made available, at rents that are equitable, to assist victims of apartheid who are employees of the United States Government in obtaining adequate housing. Such properties shall be acquired only in neighborhoods which would be open to occupancy by other employees of the United States Government in South Africa.

Real property.  
Housing.  
22 USC 5033.

(b) There are authorized to be appropriated \$10,000,000 for the fiscal year 1987 to carry out the purposes of this section.

Appropriation  
authorization.

**EMPLOYMENT PRACTICES OF UNITED STATES NATIONALS IN SOUTH AFRICA**

SEC. 207. (a) Any national of the United States that employs more than 25 persons in South Africa shall take the necessary steps to insure that the Code of Conduct is implemented.

22 USC 5034.

(b) No department or agency of the United States may intercede with any foreign government or foreign national regarding the export marketing activities in any country of any national of the United States employing more than 25 persons in South Africa that is not implementing the Code of Conduct.

*Infra.*  
Exports.

**CODE OF CONDUCT**

SEC. 208. (a) The Code of Conduct referred to in sections 203, 205, 207, and 603 of this Act is as follows:

22 USC 5035.

- (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; and
- (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.

(b) It is the sense of the Congress that in addition to the principles enumerated in subsection (a), nationals of the United States subject to section 207 should seek to comply with the following principle: taking reasonable measures to extend the scope of influence on activities outside the workplace, including—

(1) supporting the unrestricted rights of black businesses to locate in urban areas;

(2) influencing other companies in South Africa to follow the standards of equal rights principles;

(3) supporting the freedom of mobility of black workers to seek employment opportunities wherever they exist, and make provision for adequate housing for families of employees within the proximity of workers' employment; and

(4) supporting the rescission of all apartheid laws.

President of U.S. (c) The President may issue additional guidelines and criteria to assist persons who are or may be subject to section 207 in complying with the principles set forth in subsection (a) of this section. The President may, upon request, give an advisory opinion to any person who is or may be subject to this section as to whether that person is subject to this section or would be considered to be in compliance with the principles set forth in subsection (a).

President of U.S. (d) The President may require all nationals of the United States referred to in section 207 to register with the United States Government.

President of U.S. Contracts. (e) Notwithstanding any other provision of law, the President may enter into contracts with one or more private organizations or individuals to assist in implementing this section.

#### PROHIBITION ON ASSISTANCE

22 USC 5036. SEC. 209. No assistance may be provided under this Act to any group which maintains within its ranks any individual who has been found to engage in gross violations of internationally recognized human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961).

22 USC 2304.

#### USE OF THE AFRICAN EMERGENCY RESERVE

President of U.S. SEC. 210. Whenever the President determines that such action is necessary or appropriate to meet food shortages in southern Africa, 22 USC 5037. the President is authorized to utilize the existing, authorized, and funded reserve entitled the "Emergency Reserve for African Famine Relief" to provide food assistance and transportation for that assistance.

#### PROHIBITION ON ASSISTANCE TO ANY PERSON OR GROUP ENGAGING IN "NECKLACING"

22 USC 5038. SEC. 211. No assistance may be provided under this Act, the 22 USC 2151 Foreign Assistance Act of 1961, or any other provision of law to any note. individual, group, organization, or member thereof, or entity that directly or indirectly engages in, advocates, supports, or approves the practice of execution by fire, commonly known as "necklacing".

#### PARTICIPATION OF SOUTH AFRICA IN AGRICULTURAL EXPORT CREDIT AND PROMOTION PROGRAMS

22 USC 5039. SEC. 212. Notwithstanding any other provision of this Act or any other provision of law, the Secretary of Agriculture may permit South Africa to participate in agricultural export credit and promotion programs conducted by the Secretary at similar levels, and under similar terms and conditions, as other countries that have

traditionally purchased United States agricultural commodities and the products thereof.

### TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

#### PROHIBITION ON THE IMPORTATION OF KRUGERRANDS

Sec. 301. No person, including a bank, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

Banks and  
banking.  
22 USC 5051.

#### PROHIBITION ON THE IMPORTATION OF MILITARY ARTICLES

Sec. 302. No arms, ammunition, or military vehicles produced in South Africa or any manufacturing data for such articles may be imported into the United States.

22 USC 5052.

#### PROHIBITION ON THE IMPORTATION OF PRODUCTS FROM PARASTATAL ORGANIZATIONS

Sec. 303. (a) Notwithstanding any other provision of law, no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, (1) except for agricultural products during the 12-month period from the date of enactment; and (2) except for those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers and except for any article to be imported pursuant to a contract entered into before August 15, 1986: *Provided*, That no shipments may be received by a national of the United States under such contract after April 1, 1987.

Agriculture and  
agricultural  
products.  
Defense and  
national  
security.  
22 USC 5053.

(b) For purposes of this section, the term "parastatal organization" means a corporation or partnership owned or controlled or subsidized by the Government of South Africa, but does not mean a corporation or partnership which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

#### PROHIBITION ON COMPUTER EXPORTS TO SOUTH AFRICA

Sec. 304. (a) No computers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use by any of the following entities of the Government of South Africa:

22 USC 5054.

- (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 controlling the movements of the victims of apartheid.
- (7) Any apartheid enforcing agency.

(8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

(b)(1) Computers, computer software, and goods or technology intended to service computers may be exported, directly or indirectly, to or for use by an entity of the Government of South Africa other than those set forth in subsection (a) only if a system of end use verification is in effect to ensure that the computers involved will not be used for any function of any entity set forth in subsection (a).

Regulations.

(2) The Secretary of Commerce may prescribe such rules and regulations as may be necessary to carry out this section.

#### PROHIBITION ON LOANS TO THE GOVERNMENT OF SOUTH AFRICA

22 USC 5055.

SEC. 305. (a) No national of the United States may make or approve any loan or other extension of credit, directly or indirectly, to the Government of South Africa or to any corporation, partnership or other organization which is owned or controlled by the Government of South Africa.

(b) The prohibition contained in subsection (a) shall not apply to—

(1) a loan or extension of credit for any education, housing, or humanitarian benefit which—

(A) is available to all persons on a nondiscriminatory basis; or

(B) is available in a geographic area accessible to all population groups without any legal or administrative restriction; or

(2) a loan or extension of credit for which an agreement is entered into before the date of enactment of this Act.

#### PROHIBITION ON AIR TRANSPORTATION WITH SOUTH AFRICA

President of U.S.  
22 USC 5056.

SEC. 306. (a)(1) The President shall immediately notify the Government of South Africa of his intention to suspend the rights of any air carrier designated by the Government of South Africa under the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, to service the routes provided in the Agreement.

61 Stat. 3057.  
President of U.S.

(2) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to revoke the right of any air carrier designated by the Government of South Africa under the Agreement to provide service pursuant to the Agreement.

President of U.S.

(3) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation not to permit or otherwise designate any United States air carrier to provide service between the United States and South Africa pursuant to the Agreement.

(b)(1) The Secretary of State shall terminate the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, in accordance with the provisions of that agreement.

(2) Upon termination of such agreement, the Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned, directly or indirectly, by the Government of South Africa or

by South African nationals from engaging in air transportation with respect to the United States.

(3) The Secretary of Transportation shall prohibit the takeoff and landing in South Africa of any aircraft by an air carrier owned, directly or indirectly, or controlled by a national of the United States or by any corporation or other entity organized under the laws of the United States or of any State.

(c) The Secretary of Transportation may provide for such exceptions from the prohibition contained in subsection (a) or (b) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(d) For purposes of this section, the terms "aircraft", "air transportation", and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

State and local governments.

Safety.

49 USC app. 1301.

#### PROHIBITIONS ON NUCLEAR TRADE WITH SOUTH AFRICA

SEC. 307. (a) Notwithstanding any other provision of law—

(1) the Nuclear Regulatory Commission shall not issue any license for the export to South Africa of production or utilization facilities, any source or special nuclear material or sensitive nuclear technology, or any component parts, items, or substances which the Commission has determined, pursuant to section 109b. of the Atomic Energy Act, to be especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes;

(2) the Secretary of Commerce shall not issue any license for the export to South Africa of any goods or technology which have been determined, pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, to be of significance for nuclear explosive purposes for use in, or judged by the President to be likely to be diverted to, a South African production or utilization facility;

(3) the Secretary of Energy shall not, under section 57b.(2) of the Atomic Energy Act, authorize any person to engage, directly or indirectly, in the production of special nuclear material in South Africa; and

(4) no goods, technology, source or special nuclear material, facilities, components, items, or substances referred to in clauses (1) through (3) shall be approved by the Nuclear Regulatory Commission or an executive branch agency for retransfer to South Africa,

unless the Secretary of State determines and certifies to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that the Government of South Africa is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968, or otherwise maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, as defined in the Nuclear Non-Proliferation Act of 1978.

(b) Nothing in this section shall preclude—

(1) any export, retransfer, or activity generally licensed or generally authorized by the Nuclear Regulatory Commission or the Department of Commerce or the Department of Energy; or

(2) assistance for the purpose of developing or applying International Atomic Energy Agency or United States bilateral

Exports.  
Science and technology.  
22 USC 5057.  
42 USC 2139.

42 USC 2139a.

42 USC 2077.

21 UST 483.

22 USC 3201 note.

Exports.

Research and development.  
Health and medical care.  
Safety.

42 USC 1020a. safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing proliferation risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

Exports.  
Defense and  
national  
security.  
President of U.S.

(c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States nonproliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.

#### GOVERNMENT OF SOUTH AFRICA BANK ACCOUNTS

22 USC 5058.

SEC. 308. (a) A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa except for such accounts which may be authorized by the President for diplomatic or consular purposes. For purposes of the preceding sentence, the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

12 USC 461.  
Effective date.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

#### PROHIBITION ON IMPORTATION OF URANIUM AND COAL FROM SOUTH AFRICA

22 USC 5059.

SEC. 309. (a) Notwithstanding any other provision of law, no—  
(1) uranium ore,  
(2) uranium oxide,  
(3) coal, or  
(4) textiles,

that is produced or manufactured in South Africa may be imported into the United States.

Effective date.

(b) This section shall take effect 90 days after the date of enactment of this Act.

#### PROHIBITION ON NEW INVESTMENT IN SOUTH AFRICA

22 USC 5060.

SEC. 310. (a) No national of the United States may, directly or through another person, make any new investment in South Africa.

Effective date.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

(c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.

## TERMINATION OF CERTAIN PROVISIONS

**Sec. 311. (a)** This title and sections 501(c) and 504(b) shall terminate if the Government of South Africa— 22 USC 5061.

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison; Nelson Mandela.

(2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;

(3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(5) agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.

**(b)** The President may suspend or modify any of the measures required by this title or section 501(c) or section 504(b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has— President of U.S.

(1) taken the action described in paragraph (1) of subsection (a),

(2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and

(3) made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy,

unless the Congress enacts within such 30-day period, in accordance with section 602 of this Act, a joint resolution disapproving the determination of the President under this subsection.

**(c)** It is the policy of the United States to support the negotiations with the representatives of all communities as envisioned in this Act. If the South African Government agrees to enter into negotiations without preconditions, abandons unprovoked violence against its opponents, commits itself to a free and democratic post-apartheid South Africa under a code of law; and if nonetheless the African National Congress, the Pan African Congress, or their affiliates, or other organizations, refuse to participate; or if the African National Congress, the Pan African Congress or other organizations— African National Congress. Pan African Congress.

(1) refuse to abandon unprovoked violence during such negotiations; and

(2) refuse to commit themselves to a free and democratic post-apartheid South Africa under a code of law,

then the United States will support negotiations which do not include these organizations.

## POLICY TOWARD VIOLENCE OR TERRORISM

**Sec. 312. (a)** United States policy toward violence in South Africa shall be designed to bring about an immediate end to such violence and to promote negotiations concluding with a removal of the system of apartheid and the establishment of a non-racial democracy in South Africa. 22 USC 5062.

(b) The United States shall work toward this goal by diplomatic and other measures designed to isolate those who promote terrorist attacks on unarmed civilians or those who provide assistance to individuals or groups promoting such activities.

(c) The Congress declares that the abhorrent practice of "necklacing" and other equally inhumane acts which have been practiced in South Africa by blacks against fellow blacks are an affront to all throughout the world who value the rights of individuals to live in an atmosphere free from fear of violent reprisals.

#### TERMINATION OF TAX TREATY AND PROTOCOL

22 USC 5063.

SEC. 313. The Secretary of State shall terminate immediately the following convention and protocol, in accordance with its terms, the Convention Between the Government of the United States of America and the Government of the Union of South Africa for the Avoidance of Double Taxation and for Establishing Rules of Reciprocal Administrative Assistance With Respect to Taxes on Income, done at Pretoria on December 13, 1946, and the protocol relating thereto.

3 UST 3821.

#### PROHIBITION ON UNITED STATES GOVERNMENT PROCUREMENT FROM SOUTH AFRICA

Contracts.  
22 USC 5064.

SEC. 314. On or after the date of enactment of this Act, no department, agency or any other entity of the United States Government may enter into a contract for the procurement of goods or services from parastatal organizations except for items necessary for diplomatic and consular purposes.

#### PROHIBITION ON THE PROMOTION OF UNITED STATES TOURISM IN SOUTH AFRICA

22 USC 5065.

SEC. 315. None of the funds appropriated or otherwise made available by any provision of law may be available to promote United States tourism in South Africa.

#### PROHIBITION ON UNITED STATES GOVERNMENT ASSISTANCE TO, INVESTMENT IN, OR SUBSIDY FOR TRADE WITH, SOUTH AFRICA

22 USC 5066.

SEC. 316. None of the funds appropriated or otherwise made available by any provision of law may be available for any assistance to investment in, or any subsidy for trade with, South Africa, including but not limited to funding for trade missions in South Africa and for participation in exhibitions and trade fairs in South Africa.

#### PROHIBITION ON SALE OR EXPORT OF ITEMS ON MUNITIONS LIST

22 USC 5067.

SEC. 317. (a) Except as provided in subsection (b), no item contained on the United States Munition List which is subject to the jurisdiction of the United States may be exported to South Africa.

(b) Subsection (a) does not apply to any item which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and which the President determines is exported solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(c) The President shall prepare and submit to Congress every six months a report describing any license issued pursuant to subsection (b). President of U.S. Reports.

#### MUNITIONS LIST SALES, NOTIFICATION

Sec. 318. (a) Notwithstanding any other provision of this Act, the President shall: President of U.S. Exports. 22 USC 5068.

(i) notify the Congress of his intent to allow the export to South Africa any item which is on the United States Munition List and which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and

(ii) certify that such item shall be used solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(b) The Congress shall have 30 calendar days of continuous session (computed as provided in section 906(b) of title 5, United States Code) to disapprove by joint resolution of any such sale. Congress.

#### PROHIBITION ON IMPORTATION OF SOUTH AFRICAN AGRICULTURAL PRODUCTS AND FOOD

Sec. 319. Notwithstanding any other provision of law, no:

(1) agricultural commodity, product, byproduct of derivative thereof, 22 USC 5069.

(2) article that is suitable for human consumption, that is a product of South Africa may be imported into the customs territory of the United States after the date of enactment of this Act.

#### PROHIBITION ON IMPORTATION OF IRON AND STEEL

Sec. 320. Notwithstanding any other provision of law, no iron or steel produced in South Africa may be imported into the United States. 22 USC 5070.

#### PROHIBITION ON EXPORTS OF CRUDE OIL AND PETROLEUM PRODUCTS

Sec. 321. (a) No crude oil or refined petroleum product which is subject to the jurisdiction of the United States or which is exported by a person subject to the jurisdiction of the United States may be exported to South Africa. 22 USC 5071.

(b) Subsection (a) does not apply to any export pursuant to a contract entered into before the date of enactment of this Act.

#### PROHIBITION ON COOPERATION WITH THE ARMED FORCES OF SOUTH AFRICA

Sec. 322. No agency or entity of the United States may engage in any form of cooperation, direct or indirect, with the armed forces of the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. Each such activity shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947. 22 USC 5072.  
50 USC 413.

#### PROHIBITIONS ON SUGAR IMPORTS

Sec. 323. (a)(1) Notwithstanding any other provision of law, no sugars, sirups, or molasses that are products of the Republic of 22 USC 5073.

South Africa may be imported into the United States after the date of enactment of this Act.

Philippines. (2) The aggregate quantity of sugars, sirups, and molasses that—  
(A) are products of the Philippines, and  
(B) may be imported into the United States (determined without regard to this paragraph) under any limitation imposed by law on the quantity of all sugars, sirups, and molasses that may be imported into the United States during any period of time occurring after the date of enactment of this Act,

shall be increased by the aggregate quantity of sugars, sirups, and molasses that are products of the Republic of South Africa which may have been imported into the United States under such limitation during such period if this section did not apply to such period.

Tariff Schedules of the U.S. 19 USC 1202 and note. Philippines.

(b)(1) Paragraph (c)(i) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended—

(A) by striking out "13.5" in the item relating to the Philippines in the table and inserting in lieu thereof "15.8", and

(B) by striking out the item relating to the Republic of South Africa in the table.

(2) Paragraph (c) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended by adding at the end thereof the following new subparagraph:

"(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this headnote—

Philippines.

"(A) the percentage allocation made to the Philippines under this paragraph may not be reduced, and

"(B) no allocation may be made to the Republic of South Africa,

in allocating any limitation imposed under any paragraph of this headnote on the quantity of sugars, sirups, and molasses described in items 155.20 and 155.30 which may be entered."

#### TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

##### NEGOTIATING AUTHORITY

International agreements. 22 USC 5081.

SEC. 401. (a) It is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid. Sanctions imposed under such agreements should be both direct and official executive or legislative acts of governments. The net economic effect of such cooperative should be measurably greater than the net economic effect of the measures imposed by this Act.

President of U.S.

(b)(1) Negotiations to reach international cooperative arrangements with the other industrialized democracies and other trading partners of South Africa on measures to bring about the complete dismantling of apartheid should begin promptly and should be concluded not later than 180 days from the enactment of this Act. During this period, the President or, at his direction, the Secretary of State should convene an international conference of the other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

President of U.S. Reports.

(2) The President shall, not less than 180 days after the date of enactment of this Act, submit to the Congress a report containing—

The Sections concerning the code of conduct of U.S. corporations, prohibitions on imports of military articles from South Africa, identification of South African parastatal corporations, nuclear trade prohibition, prohibition on the sale of items in the munitions list, notification of munitions lists sales, report on multilateral measures, and so forth, some of which you mentioned in your opening comments.

With the exceptions of the reports called for in Section 501(b) and the program called for in Section 504(b), all of these provisions have been complied with. Several of them have already been put into effect previously by the President's Executive Order 12532 of September 9, 1985, which the Anti-Apartheid Act subsequently incorporated.

Others have been implemented in accordance with the time table set forth in the Act. The development of a program that reduces U.S. dependence on South African strategic minerals as called for in Section 504(b) is presently being drafted in the State Department. I expect to transmit the final version of that report to the Congress shortly.

The President will file the report called for in Section 501(b) in the fall, as the Act stipulates.

For your convenience, I've provided copies of all the actions taken by the Executive Branch to date connected with implementing Public Law 99-440, as well as a chronology of steps taken to implement it.<sup>1</sup>

The President's Executive Order of October 27 last year also gave the Department of State the important function of coordinating implementation of the Act within the Executive Branch, and of providing policy guidance to other agencies. This we have done through the Interagency Coordinating Committee which has met several times in the months since the Act took effect.

The Act is a complex document requiring very careful analysis. In most cases, Congress' intentions were clear. In several cases, they were not. Various amendments introduced at the last moment on the Senate Floor left the Act with several internal contradictions not all of which were resolved by the technical amendments subsequently adopted by the Congress.

This has meant that the State Department and other affected agencies have had to consult closely with one another to assure that the Executive Branch carried out Congress' wishes as literally as possible.

My colleagues and I will be happy to answer any specific questions arising from the interpretation of the law.

Last year's debate on sanctions against South Africa was emotional and bruising for all who engaged in it. In the end, the Congress rejected the Administration's conviction that generalized punitive sanctions and import bans would worsen rather than improve prospects for the early peaceful end of apartheid and its replacement by a just and democratic order in South Africa.

It was nevertheless a debate worth having. It was not the first such debate, but it was unquestionably the broadest and the loud-

<sup>1</sup> See appendix 2.

(A) a description of United States efforts to negotiate multilateral measures to bring about the complete dismantling of apartheid; and

(B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.

(c) If the President successfully concludes an international agreement described in subsection (b)(1), he may, after such agreement enters into force with respect to the United States, adjust, modify, or otherwise amend the measures imposed under any provision of sections 301 through 310 to conform with such agreement.

(d) Each agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 30 days before the day on which he enters into such agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

President of U.S.  
Federal  
Register,  
publication.

(2) after entering into the agreement, the President transmits to the House of Representatives and to the Senate a document containing a copy of the final legal text of such agreement, together with—

President of U.S.

(A) a description of any administrative action proposed to implement such agreement and an explanation as to how the proposed administrative action would change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interest of United States foreign policy and as to why the proposed administrative action is required or appropriate to carry out the agreement; and

(3) a joint resolution approving such agreement has been enacted within 30 days of transmittal of such document to the Congress.

(e) It is the sense of the Congress that the President should instruct the Permanent Representative of the United States to the United Nations to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act.

President of U.S.

#### LIMITATION ON IMPORTS FROM OTHER COUNTRIES

SEC. 402. The President is authorized to limit the importation into the United States of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition against any national of the United States imposed by or under this Act.

President of U.S.  
22 USC 5082.

#### PRIVATE RIGHT OF ACTION

SEC. 403. (a) Any national of the United States who is required by this Act to terminate or curtail business activities in South Africa may bring a civil action for damages against any person, partnership, or corporation that takes commercial advantage or otherwise benefits from such termination or curtailment.

Claims.  
Securities.  
22 USC 5083.

(b) The action described in subsection (a) may only be brought, without respect to the amount in controversy, in the United States district court for the District of Columbia or the Court of International Trade. Damages which may be recovered include lost profits and the cost of bringing the action, including a reasonable attorney's fee.

(c) The injured party must show by a preponderance of the evidence that the damages have been the direct result of defendant's action taken with the deliberate intent to injure the party.

## TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

### ADDITIONAL MEASURES

22 USC 5091.

SEC. 501. (a) It shall be the policy of the United States to impose additional measures against the Government of South Africa if substantial progress has not been made within twelve months of the date of enactment of this Act in ending the system of apartheid and establishing a nonracial democracy.

President of U.S.  
Reports.

(b) The President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate within twelve months of the date of enactment of this Act, and every twelve months thereafter, a report on the extent to which significant progress has been made toward ending the system of apartheid, including—

(1) an assessment of the extent to which the Government of South Africa has taken the steps set forth in section 101(b) of this Act;

(2) an analysis of any other actions taken by the Government of South Africa in ending the system of apartheid and moving toward a nonracial democracy; and

(3) the progress, or lack of progress, made in reaching a negotiated settlement to the conflict in South Africa.

President of U.S.  
Reports.  
Imports.

(c) If the President determines that significant progress has not been made by the Government of South Africa in ending the system of apartheid and establishing a nonracial democracy, the President shall include in the report required by subsection (b) a recommendation on which of the following additional measures should be imposed:

(1) a prohibition on the importation of steel from South Africa;

Weapons.

(2) a prohibition on military assistance to those countries that the report required by section 508 identifies as continuing to circumvent the international embargo on arms and military technology to South Africa;

(3) a prohibition on the importation of food, agricultural products, diamonds, and textiles from South Africa;

Banks and  
banking.

(4) a prohibition on United States banks accepting, receiving, or holding deposit accounts from South African nationals; and

(5) a prohibition on the importation into the United States of strategic minerals from South Africa.

(d) A joint resolution which would enact part or all of the measures recommended by the President pursuant to subsection (c) shall be considered in accordance with the provisions of section 602 of this Act.

## LIFTING OF PROHIBITIONS

SEC. 502. (a) Notwithstanding any other provision of this Act, the President may lift any prohibition contained in this Act imposed against South Africa if the President determines, after six months from the date of the imposition of such prohibition, and so reports to Congress, that such prohibition would increase United States dependence upon any member country or observer country of the Council for Mutual Economic Assistance (C.M.E.A.) for the importation of coal or any strategic and critical material by an amount which exceeds by weight the average amounts of such imports from such country during the period 1981 through 1985.

President of U.S.  
Reports.  
Imports.  
22 USC 5092.

(b)(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Commerce shall prepare and transmit to the Congress a report setting forth for each country described in subsection (a)—

Reports.

(A) the average amount of such imports from such country during the period of 1981 through 1985; and

(B) the current amount of such imports from such country entering the United States.

(2) Thirty days after transmittal of the report required by paragraph (1) and every thirty days thereafter, the President shall prepare and transmit the information described in paragraph (1)(B).

President of U.S.

## STUDY OF HEALTH CONDITIONS IN THE "HOMELANDS" AREAS OF SOUTH AFRICA

SEC. 503. The Secretary of State shall conduct a study to examine the state of health conditions and to determine the extent of starvation and malnutrition now prevalent in the "homelands" areas of South Africa and shall, not later than December 1, 1986, prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the results of such study.

Reports.  
22 USC 5093.

## REPORT ON SOUTH AFRICAN IMPORTS

SEC. 504. (a) Not later than 90 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on the extent to which the United States is dependent on the importation from South Africa of—

President of U.S.  
22 USC 5094.

- (1) chromium,
- (2) cobalt,
- (3) manganese,
- (4) platinum group metals,
- (5) ferroalloys, and
- (6) other strategic and critical materials (within the meaning of the Strategic and Critical Materials Stock Piling Act).

50 USC 98 *et seq.*

(b) The President shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a).

## STUDY AND REPORT ON THE ECONOMY OF SOUTHERN AFRICA

SEC. 505. (a) The President shall conduct a study on the role of American assistance in southern Africa to determine what needs to

President of U.S.  
Commerce and  
trade.  
Securities.  
Transportation.  
22 USC 5095.

be done, and what can be done to expand the trade, private investment, and transport prospects of southern Africa's landlocked nations.

President of U.S.  
Reports.

(b) Not later than 180 days after the date of enactment of this Act, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study conducted under subsection (a).

**REPORT ON RELATIONS BETWEEN OTHER INDUSTRIALIZED DEMOCRACIES  
AND SOUTH AFRICA**

President of U.S.  
22 USC 5096.

SEC. 506. (a) Not later than 180 days after the date of enactment of this Act, the President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing a detailed assessment of the economic and other relationships of other industrialized democracies with South Africa. Such report shall be transmitted without regard to whether or not the President successfully concluded an international agreement under section 401.

(b) For purposes of this section, the phrase "economic and other relationships" includes the same types of matters as are described in sections 201, 202, 204, 205, 206, 207, sections 301 through 307, and sections 309 and 310 of this Act.

**STUDY AND REPORT ON DEPOSIT ACCOUNTS OF SOUTH AFRICAN  
NATIONALS IN UNITED STATES BANKS**

22 USC 5097.

SEC. 507. (a)(1) The Secretary of the Treasury shall conduct a study on the feasibility of prohibiting each depository institution from accepting, receiving, or holding a deposit account from any South African national.

(2) For purposes of paragraph (1), the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

12 USC 461.

(b) Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report detailing the findings of the study required by subsection (a).

**STUDY AND REPORT ON THE VIOLATION OF THE INTERNATIONAL  
EMBARGO ON SALE AND EXPORT OF MILITARY ARTICLES TO SOUTH  
AFRICA**

President of U.S.  
22 USC 5098.

SEC. 508. (a) The President shall conduct a study on the extent to which the international embargo on the sale and exports of arms and military technology to South Africa is being violated.

(b) Not later than 179 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study required by subsection (a), including an identification of those countries engaged in such sale or export, with a view to terminating United States military assistance to those countries.

## REPORT ON COMMUNIST ACTIVITIES IN SOUTH AFRICA

SEC. 509. (a) Not later than 90 days after the date of enactment of this Act, the President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate an unclassified version of a report, prepared with the assistance of the Director of the Central Intelligence Agency, the Director of the Defense Intelligence Agency, the National Security Advisor, and other relevant United States Government officials in the intelligence community, which shall set forth the activities of the Communist Party in South Africa, the extent to which Communists have infiltrated the many black and nonwhite South African organizations engaged in the fight against the apartheid system, and the extent to which any such Communist infiltration or influence sets the policies and goals of the organizations with which they are involved.

President of U.S.  
Public  
information.  
22 USC 5099.

(b) At the same time the unclassified report in subsection (a) is transmitted as set forth in that subsection, a classified version of the same report shall be transmitted to the chairmen of the Select Committee on Intelligence of the Senate and of the Permanent Select Committee on Intelligence of the House of Representatives.

Classified  
information.

## PROHIBITION ON THE IMPORTATION OF SOVIET GOLD COINS

SEC. 510. (a) No person, including a bank, may import into the United States any gold coin minted in the Union of Soviet Socialist Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.

Banks and  
banking.  
22 USC 5100.

(b) For purposes of this section, the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) Any individual who violates this section or any regulations issued to carry out this section shall be fined not more than five times the value of the rubles involved.

Law  
enforcement  
and crime.

## ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS

SEC. 511 (a) Chapter 4 of part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 535. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS.—(a)(1) Up to \$40,000,000 of the funds authorized to be appropriated to carry out this chapter for the fiscal year 1987 and each fiscal year thereafter shall be available for assistance for disadvantaged South Africans. Assistance under this section shall be provided for activities that are consistent with the objective of a majority of South Africans for an end to the apartheid system and the establishment of a society based on non-racial principles. Such activities may include scholarships, assistance to promote the participation of disadvantaged South Africans in trade unions and private enterprise, alternative education and community development programs.

Commerce and  
trade.  
Education.  
Community  
development.  
22 USC 2346d.

"(2) Up to \$3,000,000 of the amounts provided in each fiscal year pursuant to subsection (a) shall be available for training programs for South Africa's trade unionists.

- Education. " (b) Assistance provided pursuant to the section shall be made available notwithstanding any other provision of law and shall not be used to provide support to organizations or groups which are financed or controlled by the Government of South Africa. Nothing in this subsection may be construed to prohibit programs which are consistent with subsection (a) and which award scholarships to students who choose to attend South African-supported institutions."
- Reports.  
22 USC 2346d  
note.
- Ante, p. 1111.
- (b) Not later than 90 days after the date of enactment of this Act, the Secretary of State shall prepare and transmit to the Congress a report describing the strategy of the President during the five-year period beginning on such date regarding the assistance of black Africans pursuant to section 535 of the Foreign Assistance Act of 1961 and describing the programs and projects to be funded under such section.

#### REPORT ON THE AFRICAN NATIONAL CONGRESS

- 22 USC 5101. SEC. 512. (a) Not later than 180 days after the date of enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report on actual and alleged violations of the Foreign Agents Registration Act of 1938, and the status of any investigation pertaining thereto, by representatives of governments or opposition movements in Subsaharan Africa, including, but not limited to, members or representatives of the African National Congress.
- 22 USC 611. (b) For purposes of conducting any investigations necessary in order to provide a full and complete report, the Attorney General shall have full authority to utilize civil investigative demand procedures, including but not limited to the issuance of civil subpoenas.

### TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

#### REGULATORY AUTHORITY

- President of U.S.  
Regulations.  
22 USC 5111.  
50 USC 1701  
note.  
50 USC 1701  
note.
- SEC. 601. The President shall issue such rules, regulations, licenses, and orders as are necessary to carry out the provisions of this Act, including taking such steps as may be necessary to continue in effect the measures imposed by Executive Order 12532 of September 9, 1985, and Executive Order 12535 of October 1, 1985, and by any rule, regulation, license, or order issued thereunder (to the extent such measures are not inconsistent with this Act).

#### CONGRESSIONAL PRIORITY PROCEDURES

- 22 USC 5112. SEC. 602. (a)(1) The provisions of this subsection apply to the consideration in the House of Representatives of a joint resolution under sections 311(b), 401(d), and 501(d).
- (2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.
- (3)(A) At any time after the joint resolution placed on the appropriate calendar has been on that calendar for a period of 5 legislative days, it is in order for any Member of the House (after consultation with the Speaker as to the most appropriate time for the consideration of that joint resolution) to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of that joint resolution. The motion is highly privileged and is in order even though a previous motion to

the same effect has been disagreed to. All points of order against the joint resolution under clauses 2 and 6 of Rule XXI of the Rules of the House are waived. If the motion is agreed to, the resolution shall remain the unfinished business of the House until disposed of. A motion to reconsider the vote by which the motion is disagreed to shall not be in order.

(B) Debate on the joint resolution shall not exceed ten hours, which shall be divided equally between a Member favoring and a Member opposing the joint resolution. A motion to limit debate is in order at any time in the House or in the Committee of the Whole and is not debatable.

(C) An amendment to the joint resolution is not in order.

(D) At the conclusion of the debate on the joint resolution, the Committee of the Whole shall rise and report the joint resolution back to the House, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion.

(b)(1) The provisions of this subsection apply to the consideration in the Senate of a joint resolution under section 311(b), 401(d), or 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Relations of the Senate.

(3) A joint resolution described in this section shall be considered in the Senate in accordance with procedures contained in paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98-473), except that—

98 Stat. 1935.

(A) references in such paragraphs to the Committee on Appropriations of the Senate shall be deemed to be references to the Committee on Foreign Relations of the Senate; and

(B) amendments to the joint resolution are in order.

(c) For purposes of this subsection, the term "joint resolution" means only—

(A) in the case of section 311(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the report described in section 311(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on \_\_\_\_\_ the report of the President containing the determination required by section 311(b) of the Comprehensive Anti-Apartheid Act of 1986, disapproves of such determination.", with the date of the receipt of the report inserted in the blank;

(B) in the case of section 401(d)(3), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the document described in section 401(d)(2) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on \_\_\_\_\_ the text of the international agreement described in section 401(d)(3) of the Comprehensive Anti-Apartheid Act of 1986, approves of such agreement.", with the date of the receipt of the text of the agreement inserted in the blank; and

(C) in the case of section 501(d), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the determination of the President pursuant to section 501(c) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on \_\_\_\_\_ a determination of the President under section

501(c) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's determination.", with the date of the receipt of the determination inserted in the blank.

(d) As used in this section, the term "legislative day" means a day on which the House of Representatives or the Senate is in session, as the case may be.

(e) This section is enacted—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such it is deemed a part of the Rules of the House and the Rules of the Senate, respectively, but applicable only with respect to the procedure to be followed in the House and the Senate in the case of joint resolutions under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of the House and the Senate to change their rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House or Senate, and of the right of the Committee on Rules of the House of Representatives to report a resolution for the consideration of any measure.

#### ENFORCEMENT AND PENALTIES

President of U.S.  
22 USC 5113.

SEC. 603. (a)(1) The President with respect to his authorities under section 601 shall take the necessary steps to ensure compliance with the provisions of this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders.

(2) In ensuring such compliance, the President may—

(A) require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction described in this Act either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which a foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this Act; and

(B) conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(b) Except as provided in subsection (d)—

(1) any person that violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be subject to a civil penalty of \$50,000;

(2) any person, other than an individual, that willfully violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than \$1,000,000;

(3) any individual who willfully violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than \$50,000, or imprisoned not more than 10 years, or both; and

(4) any individual who violates section 301(a) or any regulations issued to carry out that section shall, instead of the

Records.  
Reports.

penalty set forth in paragraph (2), be fined not more than 5 times the value of the krugerrands or gold coins involved.

(c)(1) Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(2) Paragraph (1) shall not apply in the case of a violation by an individual of section 301(a) of this Act or of any regulation issued to carry out that section.

(3) A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(d)(1) Any person who violates any regulation issued under section 208(d) or who, in a registration statement or report required by the Secretary of State, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall be subject to a civil penalty of not more than \$10,000 imposed by the Secretary of State. The provisions of subsections (d), (e), and (f) of section 11 of the Export Administration Act of 1979 shall apply with respect to any such civil penalty.

Reports.

50 USC app.  
2410.

(2) Any person who commits a willful violation under paragraph (1) shall upon conviction be fined not more than \$1,000,000 or imprisoned not more than 2 years, or both.

(3) Nothing in this section may be construed to authorize the imposition of any penalty for failure to implement the Code of Conduct.

*Ante*, p. 1097.

#### APPLICABILITY TO EVASIONS OF ACT

SEC. 604. This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this Act or such regulations.

22 USC 5114.

#### CONSTRUCTION OF ACT

SEC. 605. Nothing in this Act shall be construed as constituting any recognition by the United States of the homelands referred to in this Act.

22 USC 5115.

#### STATE OR LOCAL ANTI-APARTHEID LAWS, ENFORCE

SEC. 606. Notwithstanding section 210 of Public Law 99-349 or any other provision of law—

22 USC 5116.  
*Ante*, p. 749.

(1) no reduction in the amount of funds for which a State or local government is eligible or entitled under any Federal law may be made, and

Contracts.

(2) no other penalty may be imposed by the Federal Government, by reason of the application of any State or local law concerning apartheid to any contract entered into by a State or local government for 90 days after the date of enactment of this Act.

THOMAS S. FOLEY  
*Speaker pro tempore.*

STROM THURMOND  
*President of the Senate pro tempore.*

IN THE HOUSE OF REPRESENTATIVES, U.S.,

*September 29, 1986.*

The House of Representatives having proceeded to reconsider the bill (H.R. 4868) entitled "An Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

*Resolved*, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

BENJAMIN J. GUTHRIE  
*Clerk.*

I certify that this Act originated in the House of Representatives.

BENJAMIN J. GUTHRIE  
*Clerk.*

IN THE SENATE OF THE UNITED STATES,

*October 2 (legislative day, September 24), 1986.*

The Senate having proceeded to reconsider the bill (H.R. 4868) entitled "An Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

*Resolved*, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

JO-ANNE L. COE  
*Secretary.*

LEGISLATIVE HISTORY—H.R. 4868 (S. 2701):

HOUSE REPORTS: No. 99-638, Pt. 1 (Comm. on Foreign Affairs) and Pt. 2 (Comm. on Ways and Means).

SENATE REPORTS: No. 99-370 accompanying S. 2701 (Comm. on Foreign Relations).  
CONGRESSIONAL RECORD, Vol. 132 (1986):

June 18, considered and passed House.

Aug. 13, 14, S. 2701 considered in Senate.

Aug. 15, S. 2701 considered in Senate; H.R. 4868 considered and passed Senate, amended.

Sept. 12, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):

Oct. 2, Presidential veto message.

CONGRESSIONAL RECORD, Vol. 132 (1986):

Sept. 29, House overrode veto.

Oct. 2, Senate overrode veto.

est. Whatever one thinks about the outcome of that debate, it made one thing very clear: there is no debate in our nation about apartheid itself, an assault on our values to be sure, but more important, an assault on the dignity and well being of millions of black South Africans who suffer under it every day.

Our debate was a strikingly clear reflection that Americans agree that ending apartheid and replacing it with a just and democratic system are moral imperatives of our time. Where we differed was on how to express that moral outrage in a way that offered the best prospect of producing the results that we seek.

In that sense, such a debate is essential to our great democracy as it struggles toward that consensus, without which our foreign policy remains hamstrung.

Thank you, Mr. Chairman.

[Statement of Dr. Crocker follows:]

## APPENDIX 3

1A

99TH CONGRESS  
2D SESSION**H. J. RES. 756**

To make corrections in the Comprehensive Anti-Apartheid Act of 1986.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 1986

Mr. WOLPE introduced the following joint resolution; which was referred to the Committee on Foreign Affairs

OCTOBER 17, 1986

The Committee on Foreign Affairs discharged; considered and passed

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**JOINT RESOLUTION**

To make corrections in the Comprehensive Anti-Apartheid Act of 1986.

1       *Resolved by the Senate and House of Representatives*  
2 *of the United States of America in Congress assembled,*  
3 That (a) the Comprehensive Anti-Apartheid Act of 1986 is  
4 amended as follows:

5           (1) In the table of contents—

6                   (A) strike out the item relating to section  
7           309 and insert in lieu thereof the following new  
8           item:

“Sec. 309. Prohibition on importation of uranium, coal, and textiles from South Africa.”;

1                   (B) strike out the items relating to sections  
2                   317 and 318 and insert in lieu thereof the follow-  
3                   ing new items:

“Sec. 317. Prohibition on export of items on the United States Munitions List.

“Sec. 318. Notification of certain proposed United States Munitions List exports.”;

4                   and

5                   (C) strike out the item relating to section  
6                   510 and insert in lieu thereof the following new  
7                   item:

“Sec. 510. Prohibition on the importation of Soviet gold coins.”.

8                   (2) In section 3—

9                   (A) in paragraph (6)(B), strike out “Adminis-  
10                  tration” and insert in lieu thereof “administra-  
11                  tion”;

12                  (B) at the end of paragraph (7), strike out  
13                  “and”;

14                  (C) redesignate paragraph (8) as paragraph  
15                  (9); and

16                  (D) after paragraph (7), insert the following  
17                  new paragraph:

18                  “(8) the term ‘South African national’ means—

19                         “(A) a citizen of South Africa; and

20                         “(B) any partnership, corporation, or other  
21                         business association which is organized under the  
22                         laws of South Africa; and”.

23                  (3) In section 102—

1 (A) in subsection (b), insert “and” at the end  
2 of paragraph (3); and

3 (B) in subsection (c)—

4 (i) strike out “subsection 101(a)” and  
5 insert in lieu thereof “section 101(a)”; and

6 (ii) strike out “ANC” and insert in lieu  
7 thereof “African National Congress”.

8 (4) In section 103(b)—

9 (A) in paragraph (1), insert a comma after  
10 “apartheid”;

11 (B) in paragraph (4), strike out “to those  
12 whose nonviolent activities had” and insert in lieu  
13 thereof “(A) to those whose nonviolent activities  
14 have”; and

15 (C) in paragraph (7), strike out “such groups  
16 so as to achieve the objectives of this Act”  
17 and insert in lieu thereof “groups promoting  
18 terrorism”.

19 (5) In section 104(b)—

20 (A) in paragraph (5), strike out “that all  
21 countries of the region respect the human rights  
22 of their citizens and noncitizens residing in the  
23 country, and especially the release” and insert in  
24 lieu thereof “the respect by all countries of the  
25 region for the human rights of their citizens and

1 noncitizens residing in their countries and, espe-  
2 cially, the release by all such countries”; and

3 (B) in paragraph (6), strike out “demanding  
4 that all countries of the region take effective  
5 action” and insert in lieu thereof “demanding,  
6 effective action by all countries of the region”.

7 (6) In section 105—

8 (A) insert “(1)” after “states”; and

9 (B) strike out “of means” and insert in lieu  
10 thereof “(2) any means”.

11 (7) Section 106(c) is amended to read as follows:

12 “(c) The United States will work, through coordinated  
13 actions with the major Western allies and with the gov-  
14 ernments of the countries in the region, toward the achieve-  
15 ment of an agreement to suspend violence and begin  
16 negotiations.”.

17 (8) In section 109, strike out “Senate” and insert  
18 in lieu thereof “Congress”.

19 (9) In section 207—

20 (A) in subsection (a), insert “with respect to  
21 the employment of those persons” after “imple-  
22 mented”; and

23 (B) in subsection (b), insert “with respect to  
24 the employment of those persons” after “Con-  
25 duct”.

1 (10) In section 208—

2 (A) in subsection (b)(3), strike out “make”  
3 and insert in lieu thereof “making”; and

4 (B) in the second sentence of subsection (c),  
5 strike out “this section” each of the two places it  
6 appears and insert in lieu thereof “section 207”.

7 (11) In section 212, insert “are participated in  
8 by” after “as”.

9 (12) In section 303—

10 (A) in subsection (b)—

11 (i) strike out “corporation or partner-  
12 ship owned or controlled” and insert in lieu  
13 thereof “corporation, partnership, or entity  
14 owned, controlled,”; and

15 (ii) strike out “corporation or partner-  
16 ship” the second place it appears and insert  
17 in lieu thereof “corporation, partnership, or  
18 entity”; and

19 (B) at the end of the section, add the follow-  
20 ing new subsection:

21 “(c) Nothing in this section prohibits the importation  
22 into the United States of any publication, including any book,  
23 newspaper, magazine, film, phonograph record, tape record-  
24 ing, photograph, microfilm, microfiche, poster, or any other  
25 similar material.”.

## 6

1           (13) In section 306(d), insert “ ‘air carrier,’” after  
2           “ ‘aircraft,’”.

3           (14) In section 309—

4                   (A) in the section heading relating thereto,  
5                   strike out “URANIUM AND COAL” and insert  
6                   in lieu thereof “URANIUM, COAL, AND  
7                   TEXTILES”;

8                   (B) in subsection (a), strike out “is” and  
9                   insert in lieu thereof “are”;

10                  (C) redesignate subsection (b) as subsection  
11                  (c); and

12                  (D) insert after subsection (a) the following  
13                  new subsection:

14           “(b) For purposes of this section, the term ‘textiles’ does  
15 not include any article provided for in item 812.10 or 813.10  
16 of the Tariff Schedules of the United States.”.

17           (15) In section 312(b), strike out “civilians or”  
18           and insert in lieu thereof “civilians and”.

19           (16) In section 313, strike out “the following con-  
20           vention and protocol”.

21           (17) In section 314—

22                   (A) strike out “agency” and insert in lieu  
23                   thereof “agency,”; and

24                   (B) strike out “diplomatic and” and insert in  
25                   lieu thereof “diplomatic or”.

1 (18) In section 317—

2 (A) in the section heading relating thereto,  
3 strike out “SALE OR EXPORT OF ITEMS  
4 ON” and insert in lieu thereof “EXPORT OF  
5 ITEMS ON THE UNITED STATES”; and

6 (B) in subsection (a), strike out “Munition”  
7 and insert in lieu thereof “Munitions”.

8 (19) In section 318—

9 (A) amend the section heading relating  
10 thereto to read as follows: “NOTIFICATION OF  
11 CERTAIN PROPOSED UNITED STATES  
12 MUNITIONS LIST EXPORTS”;

13 (B) in subsection (a) in the text above clause  
14 (i), strike out “shall:” and insert in lieu thereof  
15 “shall—”;

16 (C) in subsection (a), redesignate paragraphs  
17 (i) and (ii) as paragraphs (1) and (2), respectively;

18 (D) in subsection (a)(1), as redesignated by  
19 clause (C)—

20 (i) insert “of” after “Africa”; and

21 (ii) strike out “Munition” and insert in  
22 lieu thereof “Munitions”; and

23 (E) amend subsection (b) to read as follows:

24 “(b)(1) No item described in subsection (a) may be ex-  
25 ported if the Congress, within 30 days of continuous session

1 after a certification is made under subsection (a)(2), enacts, in  
2 accordance with section 602 of this Act, a joint resolution  
3 disapproving such export.

4 “(2) For purposes of paragraph (1), the term “continu-  
5 ous session” is used within the meaning of section 906(b) of  
6 title 5, United States Code.”.

7 (20) In section 319—

8 (A) in the text above paragraph (1), strike  
9 out “no:” and insert in lieu thereof “no—”;

10 (B) in paragraph (1), strike out “commodity,  
11 product, byproduct of derivative thereof,” and  
12 insert in lieu thereof “commodity or product or  
13 any byproduct or derivative thereof, or”; and

14 (C) strike out paragraph (2) and insert in lieu  
15 thereof the following:

16 “(2) article that is suitable for human consump-  
17 tion,

18 that is a product of South Africa may be imported into the  
19 United States after the date of enactment of this Act.”.

20 (21) In section 320—

21 (A) strike out “Notwithstandig” and insert in  
22 lieu thereof “Notwithstanding”;

23 (B) insert after “produced” a comma and the  
24 following: “or iron ore extracted,”; and

1 (C) insert before the period at the end there-  
2 of a comma and the following: "except that any  
3 such commodity may be imported pursuant to a  
4 contract entered into before August 15, 1986, if  
5 no shipment of such commodity is imported by a  
6 national of the United States under such contract  
7 after December 31, 1986".

8 (22) In section 321—

9 (A) in subsection (a)—

10 (i) strike out "or which is exported by a  
11 person subject to the jurisdiction of the  
12 United States"; and

13 (ii) insert after "South Africa" the fol-  
14 lowing: ", and no crude oil or refined petro-  
15 leum product may be exported to South  
16 Africa by a person subject to the jurisdiction  
17 of the United States"; and

18 (B) in subsection (b), before the period at the  
19 end thereof insert a comma and the following: "if  
20 no shipment of such export is made under such  
21 contract after December 31, 1986".

22 (23) In section 322, insert "for" after "except".

23 (24) In section 401—

24 (A) in the third sentence of subsection (a),  
25 insert "agreements" after "cooperative";

1 (B) in the first sentence of subsection (b)(1),  
2 strike out “arrangements with the other industri-  
3 alized democracies and other trading partners of  
4 South Africa” and insert in lieu thereof “agree-  
5 ments with the other industrialized democracies”;

6 (C) in subsection (c), strike out “sections 301  
7 through 310” and insert in lieu thereof “title  
8 III”; and

9 (D) in subsection (d)(3), insert “, in accord-  
10 ance with section 602 of this Act,” after “en-  
11 acted”.

12 (25) In section 402, strike out “against any na-  
13 tional of the United States”.

14 (26) In section 501—

15 (A) in subsection (c), strike out paragraph  
16 (1);

17 (B) in subsection (c)(3), strike out “food, ag-  
18 ricultural products, diamonds, and textiles” and  
19 insert in lieu thereof “diamonds”; and

20 (C) in subsection (c), redesignate paragraphs  
21 (2) through (5) as paragraphs (1) through (4),  
22 respectively.

23 (27) In section 502—

24 (A) in subsection (a), strike out “material  
25 by” and insert in lieu thereof “material to”; and

PREPARED STATEMENT OF HON. CHESTER A. CROCKER, ASSISTANT SECRETARY FOR  
AFRICAN AFFAIRS, DEPARTMENT OF STATE

My name is Chester A. Crocker. I am the Assistant Secretary of State for African Affairs.

Thank you, Mr. Chairman, for this opportunity to testify about implementation of the measures called for in the Comprehensive Anti-Apartheid Act of 1986. My colleagues from other agencies and I, representing the State Department, stand ready to answer any questions you and other Representatives have on how we have given effect to the provisions of the Act.

As you know, the President signed an Executive Order on October 27, 1986 authorizing the appropriate departments and agencies of government to take all steps necessary, consistent with the Constitution, to implement the requirements of Public Law 99-440. Several functions were reserved to the Department of State in that Presidential Executive Order. What I propose to do today in my testimony is to discuss in general terms, and very briefly, what the Department of State has done to implement the Law, as instructed by the President.

The State Department's Role in Implementing P.L. 99-440

Secretary Shultz's instructions to me about putting this Law into effect were categorical: implement it faithfully, period. We have done so. Under terms of the President's Executive Order, the State Department was instructed to implement the following provisions of the Law:

1           (B) in subsection (b)(2), strike out “(1) and  
2           every thirty days thereafter, the President shall  
3           prepare and transmit” and insert in lieu thereof  
4           “(1), and every thirty days thereafter, the Presi-  
5           dent shall prepare and transmit to the Congress a  
6           report containing”.

7           (28) In section 505(a), insert a comma after  
8           “done” the second place it appears.

9           (29) In section 510—

10           (A) strike out subsection (b);

11           (B) redesignate subsection (c) as subsection  
12           (b); and

13           (C) in subsection (c), strike out “rubles” and  
14           insert in lieu thereof “gold coins”.

15           (30) In section 512(a), strike out “Subsaharan”  
16           and insert in lieu thereof “subSaharan”.

17           (31) In section 602—

18           (A) in subsection (a)(1), insert “318(b),” after  
19           “311(b),”;

20           (B) in subsection (b)(1), insert “318(b),” after  
21           “311(b),”;

22           (C) in subsection (b)(3), insert “the” after  
23           “with”;

1 (D) in subsection (c), redesignate paragraphs  
2 (A), (B), and (C) as paragraphs (1), (3), and (4),  
3 respectively; and

4 (E) in subsection (c), insert after paragraph  
5 (1), as redesignated by clause (D) of this para-  
6 graph, the following new paragraph:

7 “(2) in the case of section 318(b), a joint resolu-  
8 tion which is introduced in a House of Congress within  
9 3 legislative days after the Congress receives a certifi-  
10 cation of the President pursuant to section 318(b) and  
11 for which the matter after the resolving clause reads as  
12 follows: ‘That the Congress, having received on  
13 a certification of the President under  
14 section 318(b)(2) of the Comprehensive Anti-Apartheid  
15 Act of 1986, approves the President’s certification.’,  
16 with the date of the receipt of the certification inserted  
17 in the blank;”.

18 (b) The Foreign Assistance Act of 1961 is amended as  
19 follows:

20 (1) In section 105(b)(2)(C)(i), strike out “inserv-  
21 ice” and insert in lieu thereof “in-service”.

22 (2) In section 116(f)(2)(B), strike out “paragraph”  
23 and insert in lieu thereof “subsection”.

24 (3) In section 535(a)(1), insert “and” after “enter-  
25 prise,”.

1       (c) The amendments made by subsections (a) and (b)  
2 shall be deemed to have taken effect upon the enactment of  
3 the Comprehensive Anti-Apartheid Act of 1986.

## APPENDIX 4

## DEPARTMENT OF STATE RESPONSES TO QUESTIONS SUBMITTED

Q: Section 401 (a) and (b) state, (1) "It is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid. Sanctions imposed under such agreements should be both direct and official executive or legislative acts of governments. The net economic effect of such cooperative agreements should be measurably greater than the net economic effect of the measures imposed by this Act. Negotiations to reach international cooperative agreements with the other industrialized democracies on measures to bring about the complete dismantling of apartheid should begin promptly and be concluded not less than 180 days from the enactment of this Act. During this period, the President, or at his direction, the Secretary of State should convene an international conference of other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

In accordance with the clear statement of Congressional intent and policy, has the President directly or through the Secretary of State:

- (a) Sought to conclude specific "international cooperative agreements" with the other industrialized democracies that would include official economic sanctions?
- (b) Promptly begun negotiations with other industrialized democracies to reach such cooperative agreements within 180 days of the enactment of the Act?
- (c) Convened an international conference of other industrialized democracies to reach cooperative agreements to impose sanctions against South Africa?
- (d) If any of the above have not been done, why has the President chosen not to do them?

A: AS WE EXPLAINED IN OUR REPORT TO THE CONGRESS PURSUANT TO SECTION 401 (b) (2) (A) OF THE ACT, WE HAVE BEEN ENGAGED IN SUBSTANTIAL AND CONTINUOUS MULTILATERAL CONSULTATIONS REGARDING WESTERN POLICY TOWARD SOUTH AFRICA. IT HAS BEEN OUR PURPOSE TO WORK TOWARD A POLITICAL FRAMEWORK WITHIN WHICH SERIOUS NEGOTIATIONS CAN BEGIN IN SOUTH AFRICA. THE ADMINISTRATION HAS NOT FELT IT WISE, HOWEVER, TO ACT ON THE THREE CONGRESSIONAL

RECOMMENDATIONS NOTED IN YOUR QUESTION. AS WE STATED IN OUR REPORT OF APRIL 2, THE ADMINISTRATION GAVE CAREFUL CONSIDERATION TO THESE RECOMMENDATIONS. WE TOOK INTO ACCOUNT THE STATED PURPOSES OF THIS PROVISION AND THE AGREEMENTS CONTEMPLATED AS WELL AS THE PRACTICAL DIFFICULTIES INHERENT IN PROPOSING AND NEGOTIATING SUCH AGREEMENTS (A CONCERN VOICED ON THE SENATE FLOOR DURING CONSIDERATION OF THE ACT).

THE CONCLUSION DRAWN BY THE ADMINISTRATION WAS THAT THERE WOULD BE NO PRACTICAL BENEFIT AT THIS TIME IN FOLLOWING THESE RECOMMENDATIONS. YOU ARE WELL AWARE OF OUR FEELINGS REGARDING PUNITIVE ECONOMIC SANCTIONS. BUT WE FEEL THAT THE IMPORTANT ISSUE REMAINS THE IDENTIFICATION OF THOSE BILATERAL AND MULTILATERAL MEASURES WHICH ARE LIKELY TO INFLUENCE THE SOUTH AFRICAN GOVERNMENT TO ABANDON APARTHEID. IT IS THIS TYPE OF ROLE WHICH WE HAVE BEEN SEEKING TO PLAY IN CONCERT WITH OUR ALLIES.

AS A FINAL POINT, I SHOULD STRESS AGAIN THAT THE LEGISLATIVE HISTORY OF SECTION 401 CONFIRMS THAT THIS PROVISION IS ADVISORY AND NOT MANDATORY (EXCEPT WITH REGARD TO THE REPORTING REQUIREMENTS) AND THAT IT WAS LARGELY DESIGNED TO ESTABLISH A SPECIFIC PROCEDURE TO MODIFY THE ACT IF THE PRESIDENT CHOSE TO RELY ON THE AUTHORITY CONTAINED IN THIS SECTION.

Q: Section 401 (c) states the sense of Congress that the President should instruct the Permanent Representative of the U.S. to the U.N. "to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act".

- (a) Has the President so instructed the U.S. Permanent Representative to the U.N.?
- (b) If not, why not?
- (c) The U.S. recently vetoed a U.N. resolution mandating, multilaterally, economic sanctions found in the Anti-Apartheid Act because it determined, according to the Secretary of State's report of April 2 to the Congress, that mandatory U.N. sanctions would give the Soviets "unacceptable influence" over future U.S. policy (presumably because they could veto the lifting of sanctions in the future should circumstances in South Africa change). Couldn't this problem be solved by establishing a time period, such as twelve months, for U.N. sanctions, which would be renewable only by a new vote?

A: OUR POSITION ON MANDATORY U.N SANCTIONS IS CLEAR. BECAUSE OF THIS POSITION, WE HAVE NOT INSTRUCTED THE U.S.' PERMANENT REPRESENTATIVE TO THE U.N. TO PROPOSE ARTICLE 41 OR CHAPTER VII SANCTIONS TO THE SECURITY COUNCIL.

IN TAKING THE DECISION TO VETO RESOLUTIONS CALLING FOR SANCTIONS AT THE U.N., WE NOTE THAT WE WERE ALIGNED WITH BOTH THE UNITED KINGDOM AND THE FEDERAL REPUBLIC OF GERMANY, TWO OF THE INDUSTRIALIZED DEMOCRACIES NOTED IN YOUR EARLIER QUESTION. WE CONTINUE TO BELIEVE THAT IT WOULD BE A MISTAKE TO AGREE TO THE IMPOSITION OF MANDATORY INTERNATIONAL SANCTIONS BY THE SECURITY COUNCIL. IN ADDITION TO THE ISSUE OF UNACCEPTABLE SOVIET INFLUENCE NOTED ABOVE, OUR MAIN CONCERN (AND THIS WAS OUTLINED IN OUR APRIL 2 REPORT), IS THAT ADDITIONAL U.N. SANCTIONS AGAINST SOUTH AFRICA ARE PROPERLY A SOVEREIGN RESPONSIBILITY AND THAT DECISIONS AS TO WHETHER TO IMPOSE THEM SHOULD BE MADE BY EACH NATION ACCORDING TO ITS OWN EXPERIENCE AND ESTIMATE OF WHAT ACTIONS WILL BE EFFECTIVE.

Q: Section 317 prohibits exports to South Africa of items on the Munitions List subject to the U.N. Arms Embargo, and Section 318 requires detailed Congressional notification of Presidential intent to export Munitions List items not covered by the U.N. embargo for non-military purposes.

Has any such notification been made to Congress or is any such notification being considered by the State Department?

Does the State Department regard the prohibitions against military exports in Sections 317 and 318 as covering U.S. covert operations? Would it be a violation of law or policy for a U.S. intelligence agency (including the NSC) to ship Munitions List items to South Africa for use by U.S.-supplied insurgents in Angola or Mozambique?

A: -- NO SUCH NOTIFICATION HAS BEEN MADE.

-- EXPORTS OF MUNITIONS LIST ARTICLES ARE CONTROLLED PRIMARILY BY THE STATE DEPARTMENT PURSUANT TO SECTION 38 OF THE ARMS EXPORT CONTROL ACT. THIS PROVISION AND OTHER STATUTORY ENACTMENTS RECOGNIZE THAT CERTAIN TRANSFERS ARE CONTROLLED BY THE PRESIDENT PURSUANT TO OTHER LEGAL AUTHORITIES, INCLUDING SPECIAL INTELLIGENCE FINDINGS. FOR EXAMPLE, SECTION 602 OF THE INTELLIGENCE AUTHORIZATION ACT OF OCTOBER 27, 1986, ESTABLISHES SPECIAL PROCEDURES FOR TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES IN THE CONTEXT OF INTELLIGENCE ACTIVITIES.

-- WHETHER SECTIONS 317 AND 318 OF THE CAAA WOULD BE APPLICABLE AS A MATTER OF LAW TO ANY COVERT TRANSSHIPMENTS OF ARMS THROUGH SOUTH AFRICA IS A QUESTION INVOLVING CONGRESSIONAL INTENT. HOWEVER, THE LEGISLATIVE HISTORY OF THESE PROVISIONS IS SILENT ON WHETHER THESE PROVISIONS WERE INTENDED TO AFFECT COVERT ACTIVITIES.

-- IN ANY EVENT, ARMS TRANSFERS IN ANY COVERT CONTEXT ARE SUBJECT TO SPECIAL CONGRESSIONAL NOTIFICATION PROCEDURES, AND THE CONGRESS WOULD BE AWARE OF ANY ACTIVITIES IN THIS AREA. ANY HYPOTHETICAL TRANSACTION INVOLVING SOUTH AFRICA WOULD ALSO BE SUBJECT TO THE REQUIREMENTS OF THE U.N. ARMS EMBARGO OF NOVEMBER 4, 1977, AND THE RESTRICTION ON INTELLIGENCE COOPERATION WITH SOUTH AFRICA CONTAINED IN SECTION 107 OF THE INTELLIGENCE AUTHORIZATION ACT OF OCT. 27, 1986 (AND SECTION 322 OF THE CAAA).

Q: According to Section 504 (b), the President "shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa" of various strategic and critical materials. What steps have been taken to develop such a program?

A: ON OCTOBER 27, 1986 THE PRESIDENT DELEGATED RESPONSIBILITY FOR IMPLEMENTING SECTION 504 OF THE CAAA TO THE SECRETARY OF STATE. THAT RESPONSIBILITY WAS FURTHER DELEGATED TO THE ASSISTANT SECRETARY FOR ECONOMIC AND BUSINESS AFFAIRS. ON FEBRUARY 6, 1987, THE STATE DEPARTMENT TRANSMITTED TO CONGRESS THE "REPORT ON SOUTH AFRICAN IMPORTS" REQUIRED BY SECTION 504 (a) OF THE ACT. SINCE THAT TIME, SUBSTANTIAL PREPARATORY WORK FOR THE 504 (b) PROGRAM HAS BEEN DONE. A LIST OF KEY MATERIALS THAT MUST BE CONSIDERED IN A 504 (b) PROGRAM HAS BEEN DRAWN UP. EXTANT ANALYSES OF U.S. DEPENDENCE ON SOUTH AFRICA AND VULNERABILITY TO A CUTOFF OF SOUTH AFRICAN MATERIALS HAVE BEEN REVIEWED. THE STATE DEPARTMENT HAS CONSULTED WITH INTERESTED AGENCIES ON HOW THE PROGRAM MIGHT PROCEED. A DRAFT OUTLINE AND BASIC PRINCIPLES FOR AN INTERAGENCY STUDY HAVE BEEN CIRCULATED FOR COMMENT AMONG FIFTEEN AGENCIES, INCLUDING THE DEPARTMENTS OF COMMERCE, DEFENSE AND INTERIOR, THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL CRITICAL MATERIALS COUNCIL, OFFICE OF MANAGEMENT AND BUDGET AND ENVIRONMENTAL PROTECTION AGENCY. COMMENTS HAVE BEEN RECEIVED AND ARE BEING EVALUATED. COMPILATION OF UPDATED BACKGROUND DATA AND ELABORATION OF BASE-LINE ANALYSES WILL GET UNDERWAY SOON.

Q: According to the Section 508 report, a number of friendly countries or their citizens are involved in the arms trade to South Africa. A similar problem existed in the 1980's when "Operation Staunch" had begun to curb friendly nations' arms transfers to Iran. What organizational structures were created and what specific written instructions were given to embassies, the intelligence community and other U.S. personnel to curb arms to Iran under this Operation? Have the same structures been created for South Africa and the same instructions given in writing? If so, please explain. If not, please explain why not.

A: BOTH OPERATION STAUNCH AND THE U.S. GOVERNMENT'S EFFORT TO CURB ARMS FLOWS TO SOUTH AFRICA HAVE INVOLVED ESSENTIALLY INFORMAL PROCESSES. OUR DIPLOMATS ABROAD AND OTHER U.S. PERSONNEL ARE FULLY AWARE OF OUR INTEREST IN CURBING POTENTIAL ARMS FLOWS TO IRAN AND SOUTH AFRICA. THERE HAVE BEEN COOPERATIVE EFFORTS WITH FRIENDLY COUNTRIES TO PURSUE ALLEGATIONS OF ARMS VIOLATIONS. OUR SOURCE OF INFLUENCE, HOWEVER, HAS BEEN THE POWER OF PERSUASION: WE DO NOT HAVE THE AUTHORITY TO COMPEL OTHER COUNTRIES TO STOP TRADING ARMS WITH A THIRD COUNTRY, EVEN WHERE, AS IN THE CASE OF SOUTH AFRICA, A MANDATORY UN ARMS EMBARGO HAS BEEN IMPOSED ON ARMS TRADE WITH SOUTH AFRICA.

Functions of the Department of State

Section 208 (Code of conduct for U.S. corporations)

Section 302 (Prohibition on imports of military articles)

Section 303(b) (Identification of South African parastatals)

Section 307(a)(2) (Nuclear trade prohibition)

Section 317 (Prohibition on sale of items on Munitions List)

Section 318 (Notification of Munitions List sales)

Section 401(b)(2) ([A] Report on U.S. multilateral measures to dismantle apartheid and [B] Report on measures taken by other industrialized countries to bring about the dismantling of apartheid)

Section 501(b) (Report on progress made by the South African Government to end apartheid)

Section 504 (A) (Report on the extent of U.S. dependence on imports of strategic minerals from South Africa) and (B) the development of a program which reduces U.S. dependence on such imports)

6. Q: According to the Section 508 report on other countries' compliance with the UN arms embargo, companies in France, Israel, and Italy have continued to be involved in the maintenance and upgrade of major military systems provided before the 1977 embargo. The report states that the Government of Israel is believed to be "fully aware" of Israeli military trade with South Africa. Could the same be said of the French and Italian Governments' awareness of their companies' contributions to South African military prowess?

A: WE CANNOT ANSWER THIS QUESTION ON AN UNCLASSIFIED BASIS.

7. Q: The report refers to Israel's decision not to sign new military contracts and to let existing contracts expire?

(a) Do you understand that decision to apply not only to equipment sales but also technical assistance?

(b) Have you specifically inquired about this?

(c) Is it your understanding that Israeli technical assistance is all provided under contract, or is a certain amount provided less formally? (as through visits of delegations, Israeli investments in South African industries that are military-related).

A: (A) YES.

(B) YES.

(C) BOTH.

8. Q: The report states that, "in the absence of an inspection of Israeli-made or licensed weapons in South African hands, we cannot say whether Israel has reverse-engineered U.S. weapons or transferred U.S. technology into Israeli weapons that are similar to U.S. systems". Is there any other means by which we are trying to obtain information on this issue? (Please specify).

A: WE CANNOT SPECIFY ON AN UNCLASSIFIED LEVEL.

9. Q: The report states that companies in the Netherlands have "on occasion" exported articles without government knowledge in violation of the arms embargo, or engaged in "gray area" (military/civilian) sales to South Africa. The Dutch Ambassador has written members of Congress professing no knowledge of this charge and indicating that his Government has requested "a clarification" from the Department of State so that judicial proceedings might start. Has the Department provided the clarification and if so, what was it?

10. Q: Similarly, the Swiss Ambassador has stated he asked the Department of State for evidence supporting the same allegation, but adds that the "fragmentary information provided by the Department of State was investigated by the Swiss Attorney General and proved to be false". What information did you provide and what is your reaction to the Swiss Attorney General's conclusion?

A: THE DEPARTMENT HAS DISCUSSED THE REPORT WITH DUTCH AND SWISS OFFICIALS AND HAS MADE THE POINT THAT PROVIDING EVIDENCE WOULD INVOLVE VIOLATION OF THE SOURCES AND METHODS RESTRICTIONS. WE CANNOT SAY MORE ABOUT THIS ON AN UNCLASSIFIED LEVEL.

Q: What actions have other states taken as a result of our report?

A: WE ARE UNAWARE OF ANY ACTIONS TAKEN OTHER THAN THOSE REFERRED TO IN QUESTIONS 7, 9, AND 10. WE HAVE MADE THE SAME POINT TO FRENCH, ITALIAN, AND GERMAN OFFICIALS AS WE MADE TO THE DUTCH AND SWISS.

Q: Section 307(c) states that prohibitions of subsection (a) shall not apply to a particular export, retransfer, or activity if the President determines that to apply the prohibitions would prejudice U.S. nonproliferation objectives or would otherwise jeopardize the common defense and security of the U.S. Has the President ever made either of these two determinations? If so, what were the circumstances and what materials were transferred?

A: NO DETERMINATIONS HAVE BEEN MADE UNDER SECTION 307(c). (NOTE: IF A DETERMINATION WERE EVER MADE, SECTION 307(c) REQUIRES THE PRESIDENT TO REPORT THAT DETERMINATION TO THE CONGRESS AT LEAST 60 DAYS BEFORE THE EXPORT, RETRANSFER, OR ACTIVITY.)

Q: According to the New York Times of April 26, 1987, the White House is proposing that \$250 million in stockpile materials be sold and \$870 million earmarked for purchases to be transferred to the Government's general fund to offset the Federal deficit. How would this impact upon stockpiles of critical and strategic materials from South Africa?

A: THERE ARE NO CURRENT PLANS OR PROPOSALS TO TRANSFER ANY FUNDS FROM THE TRANSACTION FUND TO THE TREASURY GENERAL FUND DURING FY 1987 OR 1988. THE CURRENT DISPOSAL PLANS ARE \$125 MILLION FOR FY 1987 AND \$275 MILLION FOR FY 1988. THE EFFECT OF THESE DISPOSALS WOULD BE TO ENSURE THAT THERE WOULD BE FUNDS AVAILABLE FOR APPROPRIATIONS TO UPGRADE FERROCHROMIUM AND FERROMANGANESE, WHICH ARE STRATEGIC AND CRITICAL MATERIALS FROM SOUTH AFRICA, OR TO ACQUIRE OTHER MATERIALS NEEDED TO MODERNIZE OUR STOCKPILE, SUCH AS GERMANIUM.

Q: Since the enactment of the Act, have any steps been taken to either build up or sell stockpiles of critical and strategic metals for which our economy is dependent upon imports from South Africa?

A: SINCE OCTOBER 2, 1986, THERE HAVE BEEN NO ACQUISITIONS OF THE TEN MATERIALS IN QUESTION. DURING FY 1987 THERE ARE PLANS TO SELL 1,500 SHORT TONS OF ANTIMONY AND 2,000,000 CARATS OF INDUSTRIAL DIAMOND STONES FROM THE NATIONAL DEFENSE STOCKPILE. THESE ARE MATERIALS THAT HAVE BEEN DETERMINED TO BE SURPLUS UNDER EXISTING STATUTORY GOALS AND FOR WHICH CONGRESS HAS PROVIDED SPECIAL DISPOSAL AUTHORITY IN LAW.

PURSUANT TO SECTION 3205 OF PUBLIC LAW 99-661 (THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1987), 53,500 SHORT TONS OF HIGH CARBON FERROCHROMIUM AND 58,500 SHORT TONS OF HIGH CARBON FERROMANGANESE ARE PLANNED TO BE ADDED TO THE NATIONAL DEFENSE STOCKPILE BY THE CONVERSION OF EXISTING STOCKPILE INVENTORIES OF CHROMITE AND MANGANESE ORES. BY STATUTORY MANDATE, A TOTAL OF 374,000 SHORT TONS OF HIGH CARBON FERROCHROMIUM AND 472,000 SHORT TONS OF HIGH CARBON FERROMANGANESE IS TO BE ADDED TO THE NATIONAL DEFENSE STOCKPILE OVER 7 YEARS BY SUCH CONVERSION OF EXISTING STOCKPILE INVENTORIES.

PRELIMINARY PLANS FOR FY 1988 ENVISION ADDITION TO THE STOCKPILE OF HIGH CARBON FERROCHROMIUM AND FERROMANGANESE. THE FOLLOWING MATERIALS, WHICH HAVE BEEN DETERMINED TO BE SURPLUS UNDER EXISTING STATUTORY GOALS AND FOR WHICH CONGRESS HAS PROVIDED SPECIAL DISPOSAL AUTHORITY IN LAW, ARE PLANNED FOR DISPOSAL: CHRYSOTILE ASBESTOS, INDUSTRIAL DIAMOND STONES, AND METALLURGICAL MANGANESE ORE.

IN ADDITION, THESE PLANS CALL FOR DISPOSALS OF MATERIALS FOR WHICH THERE ARE ADEQUATE SUPPLIES TO MEET NATIONAL EMERGENCY NEEDS AS DEFINED IN THE STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT. MATERIALS FOR WHICH STATUTORY DISPOSAL AUTHORITY IS BEING REQUESTED INCLUDE: ANTIMONY, CHEMICAL GRADE CHROMITE ORE, CHORMIUM (FERROSILICON), COBALT, INDUSTRIAL DIAMONDS (CRUSHING BORT), MANGANESE (BATTERY GRADE, SYNTHETIC DIOXIDE), METALLURGICAL GRADE MANGANESE ORE, ELECTROLYTIC MANGANESE METAL, IRIIDIUM, PALLADIUM, PLATINUM AND RUTILE.

2506f

Q: Given the State Department's responsibility for monitoring U.S. munitions exports to South Africa (under Section 317 of the Anti-Apartheid Act), please respond to the following:

Can the State Department confirm or disconfirm reports that in late 1986 and early 1987 U.S. arms were shipped to South Africa? (from points in the United States, Europe and Central America; see attached photocopies.)

We understand that Customs has been investigating the reports of U.S. arms shipments contained in The Independent article of December 9, 1986. What are the findings of this investigation?

A: -- THERE HAVE BEEN SEVERAL PRESS ALLEGATIONS REGARDING ARMS SHIPMENTS TO SOUTH AFRICA. THE DEPARTMENT OF STATE HAS INVESTIGATED THESE PRESS ALLEGATIONS AND IS NOT AWARE OF ANY EVIDENCE INDICATING THAT SUCH SHIPMENTS ACTUALLY OCCURRED IN 1986 AND EARLY 1987. THE REPORT ON THE ARMS EMBARGO PROVIDED BY THE DEPARTMENT PURSUANT TO SECTION 508 OF THE CAAA CONTAINS THE AVAILABLE INFORMATION ON EXPORTS FROM THIRD COUNTRIES.

-- THERE HAVE, OF COURSE, BEEN ATTEMPTS TO EXPORT DEFENSE ARTICLES AND SERVICES. AN INDICTMENT WAS RECENTLY RETURNED IN LOS ANGELES FOR AN ATTEMPT TO VIOLATE THE ARMS EXPORT CONTROL ACT AND THE COMPREHENSIVE ANTI-APARTHEID ACT.

-- THE DEPARTMENT HAS PREVIOUSLY INDICATED TO THE HFAC THAT CUSTOMS INITIATED AN INVESTIGATION IN DECEMBER 1986 REGARDING ANOTHER ALLEGED ATTEMPT TO EXPORT DEFENSE ARTICLES TO SOUTH AFRICA. IT IS THE DEPARTMENT OF STATE'S UNDERSTANDING THAT THE INVESTIGATION HAS NOT BEEN COMPLETED. IT WOULD CONSEQUENTLY BE INAPPROPRIATE FOR US TO COMMENT FURTHER ON THE ALLEGED ATTEMPT.

## APPENDIX 5

DEPARTMENT OF STATE RESPONSES TO ADDITIONAL QUESTIONS  
REQUESTED

Q: Does the absence of coordinated sanctions (as opposed to bilateral and conflicting sanctions) make our own sanctions more or less effective?

A: FROM A STRICTLY ECONOMIC POINT OF VIEW, THE ABSENCE OF COORDINATED SANCTIONS LIMITS THE ECONOMIC IMPACT OF U.S. SANCTIONS IN TERMS OF THEIR EFFECT ON SA'S ECONOMY. IN ECONOMIC TERMS, COORDINATED SANCTIONS WOULD BE MORE "EFFECTIVE", BUT THE QUESTION SHOULD BE EFFECTIVE AT WHAT? SUCH MEASURES IF INTERNATIONALIZED WOULD DO GREATER HARM TO SA'S ECONOMY, WOULD DRIVE SOUTH AFRICA FURTHER TOWARD SELF-SUFFICIENCY AND AWAY FROM THE MODERATING EFFECTS IMPLICIT IN INTERNATIONAL CONTACT, AND, EVENTUALLY, WOULD CAUSE FURTHER ECONOMIC HARDSHIPS FOR ALL SOUTH AFRICANS WHICH WOULD FALL DISPROPORTIONATELY ON THE EIGHTY PERCENT OF THE POPULATION THAT IS DISADVANTAGED BY APARTHEID AND UNABLE TO SHIELD ITSELF FROM EXTERNAL ECONOMIC PRESSURES. POLITICALLY, THE ABSENCE OF INTERNATIONALLY COORDINATED PUNITIVE SANCTIONS UNDERSCORES THE PARTICULAR DEPTH OF AMERICAN SENTIMENT AGAINST APARTHEID, WHILE AT THE SAME TIME IT INDICATES THE CLEAR VIEWS OF OUR MAJOR ALLIES THAT SUCH MEASURES ARE COUNTERPRODUCTIVE IN TERMS OF MOVING THE SAG TOWARD CHANGE AND NEGOTIATIONS.

Q: Despite a strong sense of Congress to the contrary in the Anti-Apartheid Act, the Administration vetoed a U.N. Security Council resolution recently that would have mandated the sanctions found in the Act. Two reasons have been given: with mandatory sanctions, the Soviets could veto the lifting should circumstances change, and "additional" U.N. sanctions are a "sovereign responsibility" to be determined bilaterally by each country. A resolution introduced by Senator Paul Simon and myself in the Senate and House respectively tries to solve the first problem by establishing a time period of twelve months for mandatory sanctions, meaning that they would be renewable after that time only by a new vote which would require our consent. Does this suggestion help meet your objection?

A: WE HAVE MADE OUR POSITION ON MANDATORY INTERNATIONAL SANCTIONS AGAINST SOUTH AFRICA CLEAR ON MANY OCCASIONS, MOST RECENTLY IN OUR APRIL 2 REPORT TO THE CONGRESS RESPONDING TO SECTION 401(b) OF THE ACT. FOR THE REASONS STATED IN THE REPORT, WE DO NOT BELIEVE THAT THE SUGGESTION REFERRED TO WOULD CHANGE OUR VIEWS.

Q: With regard to your second reservation, is the State Department also opposed to UN economic sanctions against countries other than South Africa? Has our stand at the UN reflected such a position? What about press reports that we are working towards economic sanctions at the UN to try and enforce peace between Iraq and Iran? What is the distinction between South Africa and other countries where we appear to favor UN sanctions?

A: THE ADMINISTRATION'S DETERMINATION ON WHETHER TO APPLY SANCTIONS TO A GIVEN COUNTRY IS BASED ON FACTORS SUCH AS OUR ASSESSMENT OF THAT COUNTRY'S VULNERABILITY TO SANCTIONS AND WHETHER IT CAN BE REASONABLY EXPECTED THAT SANCTIONS WOULD HAVE THE DESIRED EFFECT FROM THE STANDPOINT OF U.S. POLICY.

IN GENERAL, SANCTIONS AGAINST MARXIST STATES WITH CENTRALLY PLANNED ECONOMICS ARE MORE EFFECTIVE THAN SANCTIONS AGAINST OPEN-MARKET ECONOMIES. THIS IS BECAUSE, IN A CENTRALLY PLANNED ECONOMY, THERE IS LITTLE ORGANIZED ECONOMIC ACTIVITY INDEPENDENT OF THE GOVERNMENT. THUS ECONOMIC SANCTIONS DO NOT UNDERMINE THE POWER BASE OF THE OPPRESSED, FOR NO SUCH BASE EXISTS. SINCE THE ECONOMY IS AN EXTENSION OF THE STATE, THE EFFECTS OF SANCTIONS FALL PRINCIPALLY WHERE INTENDED, NAMELY, ON THE GOVERNMENT.

FURTHERMORE, SANCTIONS GENERALLY ARE MORE EFFECTIVE WHEN APPLIED TO SMALL ECONOMIES, LIKE NICARAGUA, THAN LARGE ONES, LIKE THE USSR OR CHINA.

FINALLY, A LIMITED SANCTION TARGETTING A SPECIFIC ITEM IS REALISTICALLY EASIER TO ENFORCE AND MONITOR THAN ARE BROADER OR COMPREHENSIVE SANCTIONS.

Section 506 (Report assessing other industrialized democracies' economic and other relations with South Africa)

Section 508 (Report on violations of the international arms embargo against South Africa)

Section 509 (Report on the activities of the Communist Party in South Africa)

With the exceptions of the report called for in Section 501(b) and the program called for in Section 504(b), all of these provisions have been complied with. Several of them had already been put into effect by the President's Executive Order 12532 of September 9, 1985, which the Anti-Apartheid Act subsequently incorporated. Others have been implemented in accordance with the timetable set forth in the Act. The development of a program that reduces U.S. dependence on South African strategic minerals, as called for in Section 504(b), is presently being drafted in the State Department; I expect to transmit the final version of that report to the Hill shortly. The President will file the report called for in Section 501(b) in the fall, as the Act stipulates. For your convenience, I have provided copies of all the actions taken by the Executive Branch to date connected with implementing Public Law 99-440, as well as a chronology of steps taken to implement it.

IN SUM, THE UNITED STATES IS NOT, IN PRINCIPLE, OPPOSED TO UN ECONOMIC SANCTIONS. EACH CASE IS JUDGED ON ITS MERITS. IT WOULD, IN FACT, BE DETRIMENTAL TO U.S. INTERESTS TO LOCK OURSELVES INTO A POLITICAL STANCE THAT COULD PROVE HARMFUL UNDER CERTAIN CONDITIONS. OUR STAND IN THE UN HAS UNEQUIVOCALLY REFLECTED THIS POSITION.

THE UNITED STATES IS NOT WORKING TOWARDS ECONOMIC SANCTIONS AT THE UN TO TRY TO ENFORCE PEACE BETWEEN IRAQ AND IRAN. WE DOUBT THAT SUCH SANCTIONS WOULD BE POSSIBLE TO MONITOR AND ENFORCE, AND THEY WOULD PROBABLY HAVE LITTLE SUPPORT IN THE UN SECURITY COUNCIL. OUR STRATEGY IS TO OBTAIN A SECURITY COUNCIL RESOLUTION THAT WOULD MANDATE A CEASEFIRE AND WITHDRAWAL OF ALL FORCES BEHIND THEIR RESPECTIVE BORDERS, BACKED IF NECESSARY BY ENFORCEMENT MEASURES AGAINST THE SIDE THAT DOES NOT COMPLY WITH THE RESOLUTION. WE CONTINUE TO BELIEVE STRONGLY THAT THE MOST EFFECTIVE ENFORCEMENT MEASURE WOULD BE A MANDATORY ARMS EMBARGO. WHILE WE REALIZE THAT SUCH AN EMBARGO COULD NOT BE AIRTIGHT, IT WOULD SERIOUSLY IMPEDE THE ABILITY OF THE NON-COMPLYING PARTY TO OBTAIN SOPHISTICATED WEAPONS SYSTEMS AND TO PROSECUTE THE WAR.

THE MOST IMPORTANT DISTINCTION, THEN, BETWEEN SOUTH AFRICA ON THE ONE HAND AND IRAN/IRAQ ON THE OTHER IS THE DEGREE TO WHICH A SANCTION OR SANCTIONS ARE LIKELY TO INDUCE, IN A TIMELY MANNER CONSONANT WITH U.S. INTERESTS, THE SOUGHT-FOR RESULTS. IN THE CASE OF SOUTH AFRICA, PRESENT SANCTIONS UNILATERALLY

IMPOSED BY THE U.S. HAVE NOT PRODUCED THE DESIRED RESULT. INDEED, THERE EXISTS EVIDENCE TO SUPPORT THE CONTENTION THAT THE MORE SANCTIONS ARE APPLIED AGAINST SOUTH AFRICA, THE MORE AUTARKIC THAT COUNTRY BECOMES AND THE MORE ITS LEADERSHIP ENTRENCHES ITSELF IN ESTABLISHED POLICIES. IN THE CASE OF IRAN/IRAQ, A STEMMING OF THE FLOW OF ARMS WOULD LIKELY HAVE AN IMMEDIATE AND BENEFICIAL EFFECT.

A: It seems to me that one of your written responses to the Subcommittees' questions fails to directly address the issue. Can you tell me, yes or no,

a) Whether the State Department and the U.S. Government regard sections 317 and 318 (prohibiting military exports) as covering covert operations?

b) Whether it would be a violation of the act if a U.S. intelligence agency shipped Munitions List items to South Africa for use by U.S.-supplied insurgents in Angola and Mozambique?

A: THE DEPARTMENT ADDRESSED BOTH ISSUES IN THE WRITTEN RESPONSE PROVIDED PREVIOUSLY TO THE COMMITTEE. THE DEPARTMENT HAS NOTED THAT A DEFINITIVE RESPONSE TO THESE ABSTRACT QUESTIONS DEPENDS IN PART ON THE CONGRESSIONAL INTENT IN ENACTING THE COMPREHENSIVE ANTI-APARTHEID ACT AND SEPARATE STATUTES (INCLUDING LEGISLATION ADOPTED SUBSEQUENT TO OCTOBER 2, 1986) RELATING TO COVERT ARMS TRANSFERS. THE DEPARTMENT IS UNAWARE OF ANY FACTUAL BASIS FOR QUESTION (b) ABOVE, THAT MAKES IT MORE THAN A STRICTLY HYPOTHETICAL QUESTION. WE FURTHER BELIEVE THAT DISCUSSION OF SUCH HYPOTHETICAL COVERT ACTIVITY SHOULD BE ADDRESSED IN THE CONTEXT OF THE INTELLIGENCE COMMITTEES.

Q: You refer, in your written response, to the indictment returned in Los Angeles for an attempt to violate the Arms Export Control Act and the Comprehensive Anti-Apartheid Act. Please describe this indictment, including the role of a South African Defense Attache, in detail. During this Administration, how many Defense Attaches have left this country because of inappropriate activities? Do our major European allies permit S.A. defense attaches?

A: AN INDICTMENT AGAINST A MR. POSEY WAS RETURNED ON MARCH 11 IN LOS ANGELES INVOLVING ATTEMPTS TO ILLEGALLY EXPORT U.S. MUNITIONS LIST TECHNICAL DATA ILLEGALLY TO SOUTH AFRICA. SOUTH AFRICA'S NAVAL ATTACHE TO THE U.S. WAS NAMED IN THE INDICTMENT. THE CASE IS NOW BEFORE A FEDERAL COURT IN CALIFORNIA. ANY SPECIFIC QUESTIONS REGARDING THE CASE SHOULD BE REFERRED TO THE DEPARTMENT OF JUSTICE.

IN FEBRUARY, THE STATE DEPARTMENT WAS FIRST INFORMED BY THE JUSTICE DEPARTMENT OF AN INVESTIGATION INVOLVING THE NAVAL ATTACHE OF THE SOUTH AFRICAN EMBASSY. THE JUSTICE DEPARTMENT HAD REQUESTED THE COOPERATION OF THE SOUTH AFRICAN GOVERNMENT IN THE INVESTIGATION. UPON LEARNING OF THE INVESTIGATION, WE IMMEDIATELY ADVISED THE SOUTH AFRICAN GOVERNMENT THAT WE WOULD NOT TOLERATE VIOLATIONS OF OUR LAWS BY INDIVIDUALS ENJOYING DIPLOMATIC IMMUNITIES IN THIS COUNTRY.

THE SOUTH AFRICAN GOVERNMENT SUBSEQUENTLY INFORMED US THAT THE NAVAL ATTACHE NAMED IN THE INDICTMENT HAD LEFT THE U.S. IN LATE FEBRUARY AND WOULD NOT BE RETURNING TO THIS COUNTRY. THE SOUTH AFRICAN GOVERNMENT ALSO INFORMED US THAT THE ATTACHE'S

STATUS AS A DIPLOMAT IN THE U.S. HAD TERMINATED. CONSEQUENTLY, THE ISSUE OF DECLARING THE ATTACHE PERSONA NON GRATA NEVER AROSE. THIS IS THE ONLY CASE THAT WE ARE AWARE OF DURING THIS ADMINISTRATION IN WHICH A SOUTH AFRICAN ATTACHE LEFT THE U.S. AFTER SERIOUS ALLEGATIONS WERE MADE IN A COURT OF LAW REGARDING QUESTIONABLE ACTIVITIES.

A DETAILED DISCUSSION OF ATTACHED RELATIONSHIPS BETWEEN OTHER COUNTRIES AND SOUTH AFRICA IS SET FORTH IN THE REPORT TO THE CONGRESS ON INDUSTRIALIZED DEMOCRACIES' RELATIONS WITH AND MEASURES AGAINST SOUTH AFRICA, SUBMITTED IN ACCORDANCE WITH SECTION 401(b)(2)(B) AND 506(a) OF THE COMPREHENSIVE ANTI-APARTHEID ACT.

Q: According to Section 504 of the Act, the President shall develop a program to reduce U.S. dependence on strategic and critical materials imported from South Africa. From your written response to the Subcommittee's questions, I see that you are embarking upon another "study" of the problem which has already been extensively studied during this very Administration by a special Presidential commission and numerous interagency task forces. Is there any timetable for a program to be produced or is this issue simply going to be studied to death?

A: GOOD POLICYMAKING REQUIRES CAREFUL EXAMINATION OF THE COSTS AND BENEFITS OF THE POSSIBLE OPTIONS UNDER CONSIDERATION. IN RECOGNITION OF THE ENORMOUS COMPLEXITY OF THIS ISSUE, AND ITS VITAL RELATIONSHIP TO THE ECONOMIC HEALTH OF OUR NATION, THE ADMINISTRATION WISHES CAREFULLY TO EVALUATE THE OPTIONS BEFORE PRESENTING ITS VIEWS TO CONGRESS. ANY OTHER COURSE OF ACTION WOULD BE IRRESPONSIBLE.

Q: In your report to the Congress under Section 303 of the Act, you determine that ten minerals imported from South Africa are essential to our economy and defense and unavailable from reliable and secure suppliers. These include antimony, chrysotile asbestos, industrial diamonds, and metallurgical manganese ore, among others. Yet according to your written responses, your preliminary plans for FY 1988 envision disposal of these items from the stockpile because they have been determined to be surplus under existing goals. How could they be surplus in the context of the Anti-Apartheid Act which is trying to reduce dependence on these imports? Furthermore you report the Administration is also requesting statutory disposal authority for other minerals upon which you have reported we depend on South Africa including platinum group metals and rutile. Does the right hand know what the left hand is doing?

A: AS STATED BY DEPUTY ASSISTANT SECRETARY FREEMAN IN RESPONSE TO THIS QUESTION AT THE JUNE 17 HEARINGS, THE FRAMES OF REFERENCE FOR THE TWO DECISIONS ARE QUITE DIFFERENT.

UNDER THE TERMS OF THE COMPREHENSIVE ANTI-APARTHEID ACT, WE WERE REQUIRED TO CERTIFY THAT CERTAIN MATERIALS ARE "ESSENTIAL FOR THE ECONOMY OR DEFENSE OF THE UNITED STATES." THIS DECISION REQUIRED THAT CONSIDERATION BE GIVEN TO THE NEEDS OF THE ENTIRE PEACETIME U.S. ECONOMY, INCLUDING ALL SECTORS.

BY CONTRAST, THE STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT EXPRESSES THE CLEAR WILL OF CONGRESS THAT "THE PURPOSE OF THE STOCKPILE IS TO SERVE THE INTEREST OF NATIONAL DEFENSE ONLY AND IS NOT TO BE USED FOR ECONOMIC OR BUDGETARY PURPOSES." STOCKPILE PLANNING SEEKS TO ASSURE THAT SUFFICIENT MATERIALS ARE AVAILABLE TO MEET NATIONAL DEFENSE NEEDS ARISING FROM A NATIONAL EMERGENCY OF A SPECIFIED DURATION. QUANTITIES OF MATERIAL IN EXCESS TO THE GOALS ESTABLISHED UNDER THE STOCK PILING ACT ARE SOLD AS SURPLUS.

THE FACT THAT A GIVEN COMMODITY IS IN SURPLUS AS FAR AS THE DEFENSE STOCKPILE INVENTORY IS CONCERNED DOES NOT NECESSARILY BEAR ANY RELATIONSHIP TO THE CONTINUING PEACETIME REQUIREMENTS OF THE OVERALL ECONOMY THAT WERE EXAMINED IN MAKING THE SECTION 303 DETERMINATIONS.

Operation Staunch

Q: Of these activities the U.S. is now involved in regarding staunching the flow of arms to Iran -- which of these are we now doing with respect to South Africa, especially since the UN already has an arms embargo to the international community -- and which of these are we not doing? Please elaborate on the number of personnel involved, and who is coordinating and at what level.

A: AS WE HAVE STATED BEFORE, BOTH OPERATION STAUNCH AND THE U.S. GOVERNMENT'S EFFORT TO CURB ARMS FLOWS TO SOUTH AFRICA INVOLVE ESSENTIALLY INFORMAL PROCESSES. THE TWO PROGRAMS, HOWEVER, ARE NOT IDENTICAL. OPERATION STAUNCH WAS A POLICY INITIATIVE BEGUN BY THE U.S. GOVERNMENT IN RESPONSE TO THE IRAN-IRAQ WAR. THE MANDATORY SOUTH AFRICAN ARMS EMBARGO WAS THE PRODUCT OF A 1977 UN SECURITY COUNCIL RESOLUTION THAT ALL UN MEMBER NATIONS KNOW THEY MUST IMPLEMENT AS PART OF THEIR RESPONSIBILITIES AS MEMBER STATES.

THE STATE DEPARTMENT DOES NOT HAVE PERSONNEL ASSIGNED EXCLUSIVELY TO THE TASK OF MONITORING ARMS TRADE WITH SOUTH AFRICA. OFFICERS IN THE DEPARTMENT'S AFRICAN BUREAU, POLITICAL-MILITARY BUREAU, AND BUREAU OF INTELLIGENCE AND RESEARCH, HOWEVER, DO FOLLOW SUCH DEVELOPMENTS, IN ADDITION TO THEIR OTHER RESPONSIBILITIES. MOREOVER, OUR DIPLOMATS ABROAD AND OTHER U.S. GOVERNMENT PERSONNEL ARE FULLY AWARE OF OUR INTEREST IN CURBING POTENTIAL ARMS FLOWS TO SOUTH AFRICA. WE PERIODICALLY OBTAIN INFORMATION AS TO POSSIBLE ARMS TRANSACTIONS WITH SOUTH AFRICA. THERE HAVE BEEN COOPERATIVE EFFORTS WITH FRIENDLY COUNTRIES TO SHARE SUCH INFORMATION AND TO PURSUE ALLEGATIONS OF EMBARGO VIOLATIONS.

## APPENDIX 6

## DEPARTMENT OF THE TREASURY RESPONSES TO QUESTIONS

June 10, 1987

1. According to Treasury Department regulations, anyone making a new investment in a firm owned by black South Africans or to enable a U.S. controlled firm to operate in an economically sound manner must file a report with the Office of Foreign Assets Control. Please provide any reports that have been filed.

RESPONSE: (a) There have been no filings to date under section 545.603 of the South African Transactions Regulations (the "Regulations"), concerning new investment in firms owned by black South Africans.

(b) To date, there are two filings under section 545.604 of the Regulations. The first is the G. P. Stud Farm, Inc., Burlingame, California, filing of January 26, 1987, covering a contribution of \$81,306 in The Gary Player Stud Farm, a South African partnership in which G.P. Stud Farm holds a 50% interest. The filing asserts that the contribution is required to fund operating losses.

The second filing is that of Laurel Industries, Cleveland, Ohio, dated March 27, 1987. In this case, we notified the registrant that the proposed \$62,000 investment in Antimony Products (Pty.) Ltd. did not meet the requirements of the Comprehensive Anti-Apartheid Act of 1986 (the "Act"), because Laurel Industries held only a 25% interest, and did not otherwise "control" the South African entity. Laurel confirmed that no new investment was, or would be, made.

2. According to regulations, the exception to the ban on loans to South African entities for short-term trade financing encompasses commercial letters of credit, bankers' acceptances and similar trade credits having a maturity not exceeding one year.

What information do you or the Federal Reserve Board have on the amounts of credits being provided under this exception?

**RESPONSE:** We have no information on the trade financing being provided under this statutory exception. The Federal Reserve Board has informed us that, as of December 31, 1986, member banks reported \$215 million in short-term trade financing outstanding to South African entities. The one-year maturity criterion was taken from Senator Lugar's inserted testimony in the Congressional Record of September 29, 1986, commended to us in our implementation efforts in a letter from Africa Subcommittee Chairman Wolpe, Foreign Affairs Committee Chairman Dante Fascell, and former Chairman of the Congressional Black Caucus, Representative Mickey Leland.

3. Under Treasury regulations, a U.S. national or financial institution cannot make a loan where it has reason to believe that the loan is being obtained for a prohibited borrower or recipient and the funds will be made available to such a borrower or recipient in South Africa.

a) Since this regulation was published on December 29, 1986, IBM has made a loan to an Isle of Guernsey Trust established for the benefit of its largely white South African employees to purchase stock in its South African subsidiary. As we understand it, the loan will be paid off through profits earned by the former subsidiary. Is this consistent with the regulation's prohibition on loans being made to intermediaries for South African recipients?

b) If it is not inconsistent with the regulations, is it inconsistent with the spirit of the law which forbade new loans to South Africa? Did Congress intend to encourage U.S. companies to commit new funds and receive new profits (interest) in South Africa?

**RESPONSE:** In its enforcement of the prohibition on new investment, Treasury examines transactions to ensure they do not lead to an injection of new funds or credit into South Africa. This analysis is used in examining loans in the area of so-called "disinvestment" by U.S. entities. Disinvestment is not required by the Act. The sole legislative history speaking directly to disinvestment is Senator Kassebaum's statement that the new investment prohibitions should not be read to apply to the financing of disinvestment transactions. 132 Cong. Rec. S 14647-48 (daily ed., Oct. 2, 1986).

a) The legislative history of the Act demonstrates that the Congress rejected legislation requiring disinvestment in South Africa, but does not indicate that the Congress wished to impede voluntary disinvestment. The new investment provision is, instead, a prohibition on new injections of capital into the South African economy. In order to leave South Africa, but to do so without violation of the Act's prohibition on contributions or extensions of credit in South Africa, a number of divesting U.S. firms, including IBM, have

utilized complex transactions to enable them to obtain a reasonable value for their South African subsidiaries.

Treasury examined IBM's proposed disinvestment transaction, and determined that no loan or contribution was being made in South Africa, directly or through another person. The details of that disinvestment transaction are not a matter of public record, and involve confidential business information which could be obtained most fully from IBM. We can, however, speak to the general principles applied in Treasury examination of loans, including those to third-country trusts in disinvestment cases.

First, in examining a purchase money loan to a trust, we ensure that there is no "back-to-back" loan or other quid pro quo to any South African entity or to any person located in South Africa. The fact that a trustee has discretion to distribute trust assets among a class of beneficiaries does not create a loan or contribution, where the class may be altered by the trustee, and where the trust has an obligation to the U.S. lender that effectively absorbs all funds received from the trust's sole source of income (dividends from the South African entity).

Second, questions under the prohibition on new investments in South Africa made "directly or through another person" would, of course, arise if the trustee's discretion were in fact exercised to make back-to-back loans, provide credits, or make other transfers to beneficiaries in South Africa (other than contributions or loans that are exempt, pursuant to provisions of the Act and Regulations, from the new investment prohibition). We therefore examine for this problem disinvestment transactions coming to our attention. In our experience to date under the Act, we have not seen South African employees or other South African nationals purchase U.S. companies' South African subsidiaries with funds provided after the effective date of the new investment prohibition (November 16, 1986) by U.S. nationals, including through offshore trusts. We are not aware of trusts established for the purpose of lending to employees to enable them to make purchases of a former U.S. subsidiary's shares, as suggested in item 3(a) of your questions, but such loans would violate the new investment prohibitions as you suggest.

b) See also response to item 3(a). We understand the Congressional intent in section 310 of the Act to be to end the making of new investments in South Africa, through commitments or contributions of funds or other assets, or through loans or other extensions of credit in South Africa. Congress anticipated that American business would have continued profits from South African operations, since section 3(4)(B)(i) of the Act permits a U.S. national to invest in a South African entity profits generated by a controlled South

African entity. Also, Congress did not prohibit a U.S. national from continuing to hold, and to benefit from, shares in a South African entity.

4. One of the issues involved in the ban on iron and steel imports was the definition of iron and steel. Can you tell us which iron and steel products were excluded in your definition from the ban and what was the basis of such exclusion?

RESPONSE: Section 320 of the Act contains language clearly more limited than that, for example, of the agricultural and food ban in section 319. Fabricated products of iron and steel are excluded from the ban on imports, based on the language of the statute ("iron ore, iron and steel," rather than "steel products"). Basic iron and steel, commonly referred to as basic shapes and forms, are included, as is iron ore. As in other sanctions programs, (e.g., under the Cuban nickel ban, and the former ban on Rhodesian ferrochromium), ferroalloys are treated as the alloyed element, since that element (rather than the iron element) accounts for the chief value of the import. Recently the Court of International Trade ruled against Treasury in a case under the Act involving prestressed concrete strand (a wire rope product). We had thought that this was a producer product, and included it within the ban on steel. The court disagreed, finding that prestressed concrete strand was not a basic steel product. Although the Court of International Trade determined that there was no sufficient basis to categorize this item with producer products, the court did use the general approach of Treasury in interpreting the scope of section 320 and determining that its prohibition is confined to basic steel articles. (Springfield Industries v. Treasury Dept.)

5. According to the Journal of Commerce (February 24, 1987), U.S. officials say:

a) South African exporters have disguised the origin of their goods to circumvent import restrictions;

RESPONSE: a) The Customs Service has received numerous allegations that South African merchandise is being transshipped and the country of origin is being falsely declared to circumvent the sanctions. Several investigations have been initiated and have been actively pursued. For more detailed information, see the attached summary at Attachment I of Customs investigations.

b) South African companies are transferring cargoes between ships in foreign ports in order to hide the cargo's origin;

The President's Executive Order of October 27, 1986 also gave the State Department the important function of coordinating implementation of the Anti-Apartheid Act within the Executive Branch and of providing policy guidance to other agencies. This we have done through the Inter-Agency Coordinating Committee, which has met several times in the months since the Act took effect. The Comprehensive Anti-Apartheid Act is a complex document requiring very careful analysis. In most cases, Congress's intentions were clear; in several cases, they were not. Various amendments introduced at the last moment on the Senate floor left the Act with several internal contradictions, not all of which were resolved by the technical amendments subsequently adopted by the Congress. This has meant that the State Department and other affected agencies have had to consult closely with one another to ensure that the Executive Branch carried out Congress's wishes as literally as possible. My colleagues and I will be happy to answer any specific questions arising from interpretation of the law.

Last year's debate on sanctions against South Africa was emotional and bruising for all who engaged in it. In the end, the Congress rejected the Administration's conviction that generalized punitive sanctions and import bans would worsen rather than improve prospects for the early peaceful end of apartheid and its replacement by a just and democratic order in South Africa. It was, nevertheless, a debate worth having. It was not the first such debate but it was unquestionably the

RESPONSE: b) This is a typical transshipment scheme. In the investigation of lobsters, it was determined that shipments of lobsters caught in or near South African waters were transferred between vessels. This, however, did not prove that a violation occurred. There are other investigations pending regarding various types of transshipment schemes.

c) It is believed that South Africans are re-registering their ships under other national flags both to avoid detection and to shift the technical origin of the goods to other countries.

RESPONSE: c) Customs has no direct evidence that this has occurred. However, in the investigation of the lobster importations Customs determined that the vessels handling the lobster were registered to countries other than South Africa. Due to the registry of these vessels, the origin of the lobster was determined to be not South African. From a Customs standpoint, in no other situation, other than in determining the origin of seafood, is there any advantage to changing the registry of the vessel.

6. According to the Journal of Commerce (February 24, 1987), U.S. authorities are investigating millions of dollars worth of South African lobster tails that moved from Montevideo, Uruguay to Gloucester, Massachusetts. What has your department discovered and done about this alleged violation of the prohibition on imports from South Africa of items fit for human consumption, that are products of South Africa?

RESPONSE: Customs has concluded an investigation concerning these allegations. The lobster in question was caught in or near the territorial waters of South Africa. Investigation determined that the lobster was neither caught nor processed by any South African flag vessel, and therefore, under existing Customs rulings as to the origin of seafood, it was determined that no violation occurred. A copy of the ruling is found at Attachment II.

7. Concerning regulations of Section 309:

a) Has the "import for processing and re-export" exception been applied to any other banned articles in the Act besides uranium? Has this procedure ever been utilized to avoid prohibitions on imports in other Federal statutes?

RESPONSE: a) The interim regulation on uranium ore and oxide [Regulations, section 545.427] has not been applied to imports other than uranium ore and oxide. We are not aware that this procedure is being, or has ever been, utilized to avoid prohibitions on imports, either here under the Act, or under any other Federal statute. The purpose of the interim

regulation is to preserve the status quo in order to avoid injury to the domestic uranium processing and enrichment industry during the period required to clarify the intent of Congress in adopting section 309 of the Act.

b) What is the percentage of South African uranium processed at the Paducah, Kentucky plant? Are there alternate sources of production available to replace the South African uranium, or is South African uranium the only uranium available?

RESPONSE: b) We provided the Subcommittees' initial question to the Department of Energy, and have obtained the following information:

In 1986, about 20 percent of the total foreign-origin uranium delivered to the Paducah plant was of South African origin. However, about 70 percent of the uranium from South Africa was enriched for foreign end-use. These foreign customers represent 20 to 30 percent, worth \$200 to \$300 million per year, of the Department of Energy's ("DOE's") annual enrichment sales. If South African uranium cannot be enriched for foreign end-use, DOE's foreign enrichment customers may obtain their enrichment services from overseas enrichment suppliers.

There are other enrichment suppliers in France, the United Kingdom, the Netherlands, the Federal Republic of Germany, and the Soviet Union. If DOE would lose up to 30 percent of its enrichment business, then a situation would exist where shutting down one of the two currently operating enrichment plants would be a distinct possibility. If this were realized, the Paducah plant would be the one shut down first.

Adequate amounts of uranium can be supplied from the United States, Canada, Australia, Niger, and other countries to replace South African uranium. However, non-U.S. utilities have signed long-term contracts for the supply of uranium and these utilities may be unwilling or unable to terminate the uranium supply contracts they have signed with their South African supplier. Since these foreign utilities would, most likely, be able to terminate their DOE enrichment contracts, DOE could lose up to 30 percent of its enrichment business.

c) What is the Treasury Department's basis for declaring UF6 "substantially transformed" from the original uranium and [t]hereby exempt from the Section 309 ban? The most common formulation of the substantial transformation test has been when a manufacturing or other process results in a new article of commerce having a distinctive name, character or use. However, Customs recently set forth a more extensive substantial transformation test with a detailed list of

criteria in C.F.R. Section 12.130. Which formula did the Treasury Department apply? How does UF<sub>6</sub> specifically apply to these criteria?

RESPONSE: c) Uranium hexafluoride is obtained by the fluorination of uranium tetrafluoride which, in turn, is obtained by the hydrofluorination of uranium dioxide. The uranium hexafluoride is a new commercial product, having a name, character, and use different from the original uranium.

Section 12.130 of the Customs Regulations applies generally applicable principles used in country of origin determinations to textiles and textile products, and thus was not used in determining that uranium hexafluoride was the result of a substantial transformation. Customs' decision on uranium hexafluoride is not inconsistent with the principles laid down in section 12.130 of the Customs Regulations. However, the basis for that decision was laid long before section 12.130 was adopted. See Headquarters Ruling Letter 011645 of June 30, 1971, and T.D. 71-83(25) of April 30, 1971, at Attachment III. On this basis, and based on information concerning the various stages of the conversion process from uranium oxide to uranium hexafluoride, noted above, it was concluded that uranium hexafluoride is a new commercial product, the product of a production process involving substantial chemical changes.

COMPREHENSIVE ANTI-APARTHIED ACT  
SUMMARY OF CUSTOMS INVESTIGATIONS

The U.S. Customs Service has initiated 18 domestic investigations concerning possible violations of the Comprehensive Anti-Apartheid Act of 1986. Of those, four investigations are closed and the others are actively being pursued. In one active investigation two individuals have been indicted for attempting to export licensable technical data to South Africa through another country. These are the only indictments to date.

Another investigation which has been concluded concerned allegations that South African lobster was being imported and falsely declared as to country of origin. Investigation did not substantiate these allegations.

One investigation was closed after it was determined that the commodity, galvanized fencing tube, was in fact from South Africa but the transaction occurred prior to implementation of the act. Another closed investigation concerned allegations that South African broomcorn was transshipped through Ethiopia. Investigation did not substantiate the allegation. The last closed investigation involved two small shipments of tapestries which were falsely declared as to country of origin. Investigation was closed when the importer failed to provide certificates of origin and declined to claim the merchandise.

The active investigations concern the following allegations:

In one case South African diamonds are being transshipped through the United Kingdom and falsely declared as to origin. Two cases involve steel products. In one case it is believed the product was purchased before implementation of the Act and therefore no violation. The second case involves allegations of false country of origin. There are three investigations concerning possible false declaration of origin of textiles. The other suspected importation violations concern false country of origin violations with respect to apple semi-concentrate, chairs, and sports equipment. Another investigation involves an allegation that krugerrands are being exported from the United States, remanufactured into jewelry and reimported. Preliminary indications are that there is no violation.

Three other investigations have been initiated concerning exports of petroleum products, weapons, and aircraft parts to South Africa.

In addition to the above investigations, the Customs Attache, Rome has 31 investigations involving South Africa. The Rome office has investigative responsibility for the African nations. Of these 31 inquiries, one investigation concerns transshipment

of military commodities to the South African Government, in violation of the Anti-Apartheid Act. Three additional investigations involve textiles which are allegedly manufactured in South Africa, transhipped through other countries and entered into the United States falsely declared as to country of origin. Four other investigations involve the export of steel from South Africa. It is alleged that South African steel is being exported to other countries for transshipment to the United States. To date, in three of these cases, investigations did not substantiate the allegations. The other case is still under active investigation. The remaining fraud investigations involve transshipment to South Africa to avoid U.S. quota restrictions. These investigations are all pre-sanction investigations, and to date investigations have failed to substantiate the allegations.



DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE

21 JAN 1987

VES-7-CO:R:CD:C  
108761 PH

Robert L. Follick, Esq.  
Follick & Bessich  
225 Broadway, Suite 500  
New York, New York 10007

Dear Mr. Follick:

Your letter of December 22, 1986, concerns the application of the Anti-Apartheid Act of 1986, Public Law 99-440, to certain frozen rock lobster tails and fish fillets. The lobster or fish will be caught and fully processed on board factory vessels either within or outside the so-called "12-mile limit" of South Africa. (We understand that South Africa claims jurisdiction over a territorial sea and fisheries zone of 6 and 12 nautical miles, respectively.) In some cases, the lobster or fish may be caught along the coast of South Africa by small vessels operated by South Africans. The lobster or fish are sold at sea to the owners of certain factory vessels. These factory vessels are owned by Panamanian and Cayman Island corporations and registered and flying the flags of their respective countries.

The lobster must be delivered to the factory vessels "live and in good condition" and the fish must be delivered on ice "whole and in good condition." In the case of the lobster, the processing includes deheading, washing, deveining, wrapping, preliminarily grading by weight, pre-packing in both inner and master (shipping) cartons, and freezing the processed tail to approximately -20 degrees Celsius. The fish are deheaded, gutted, washed, descaled, filleted into two or more pieces, trimmed, preliminarily packed in inner and master (shipping) cartons, and frozen to approximately -20 degrees Celsius. In the processing of both the lobster and fish, approximately 65 percent of the animal is removed and discarded.

The processed and frozen product will be preliminarily graded and packed on board the factory vessels into individual ten pound inner cartons, with two or possibly more inner cartons further packed within a master carton. The packed product will

then, from time to time as required, be taken ashore, probably to Capetown, South Africa, where it will be placed in bond so as not to enter the commerce of that country. There it will be rechecked for accuracy of weight and grading, repacking, and securing of the packaging so that the product may be containerized on land for shipment to its ultimate destination in the United States.

Section 319(2) of Public Law 99-440 prohibits the importation into the customs territory of the United States after enactment of the Public Law of any article that is suitable for human consumption that is a product of South Africa. The term "product of South Africa" is not defined in Public Law 99-440. However, the regulations of the Office of Foreign Assets Control issued under the authority of the Anti-Apartheid Act of 1986 provide that:

Determinations of country of origin for purposes of this part [31 CFR Part 545 - South African Transactions Regulations] will be made in accordance with normal Customs rules of origin. [31 CFR 545.414]

Customs has origin rules for purposes of the country of origin marking requirement (19 U.S.C. 1304; 19 CFR Part 134). Customs applied these provisions to the processing of shrimp and spiny lobster in a letter signed by the then Assistant Commissioner of Customs, Office of Regulations and Rulings, dated February 25, 1966 (RM 633.2 K). In that letter, Customs held:

1. Where the product is caught in the coastal or international waters off the west coast of Africa by Greek or other flag vessels and taken ashore for processing (deheading), grading, packaging, and freezing for ultimate shipment to the United States, the country of origin would be the country where the processing was done.
2. Where the product is caught in international waters off the west coast of Africa and processed (deheaded), graded, packaged, and frozen aboard a Greek flag fishing trawler and the product is then taken ashore for storage until shipment to the United States, the country of origin would be Greece.
3. Where the product is caught in international waters off the west coast of Africa by Japanese flag vessels and processed (deheaded), graded, packaged, and frozen aboard the vessel and taken ashore for shipment to the

- 3 -

United States or transferred directly to carriers for shipment to the United States, the country of origin would be Japan.

4. Where the product is caught in the coastal waters of Nigeria and Dahomey by a Greek flag vessel which catches the product while trolling in waters of both countries and dumps the product into the same bins on board the vessel, the country of origin would be Greece if the product is processed on board the vessel as described above or the country where the product is processed if the product is taken ashore for processing.

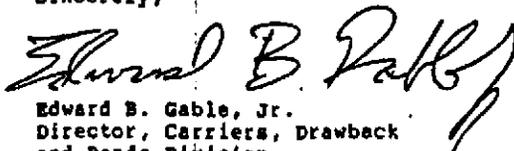
In cases concerning fish caught by United States flag vessels in the fishery conservation zone of the United States (see 16 U.S.C. 1811) and processed on foreign flag fish processing vessels, we have ruled, or cautioned, that the country of origin for marking purposes would be the same as the flag of the fish processing vessels (rulings CLA-2:R:CV:MC 060726 LCS, September 24, 1979; VES-7-02 VES-7-03-CO:R:CD:C 105041 MKT, June 5, 1981; and CLA-2 CO:R:CV:G 068292 LCS, March 31, 1982).

Customs also rules upon the origin of articles for purposes of dutiability (see part 3 and part 15A, schedule 1, Tariff Schedules of the United States (TSUS)). We have ruled that frozen processed and packaged bottom fish which were caught by United States flag vessels and transferred to a foreign flag processing vessel operating within the United States fishery conservation zone would be considered a product of the country the flag of which the processing vessel flies (rulings dated September 24, 1979, and March 31, 1982, referred to above).

On the basis of the foregoing rulings, we conclude that the country of origin of the lobster tails and fish fillets under consideration, for purposes of marking and dutiability, would be that of the processing vessels. The storage in bond and rechecking for accuracy of weight and grading, repacking and securing of the packaging for containerization in South Africa for shipment to the United States would not affect this determination of origin of the lobster and fish (see our rulings VES-7-CO:R:CD:C 108687 PH, November 10, 1986; VES-7-CO:R:CD:C 108736 PH, December 4, 1986; and VES-7-CO:R:CD:C 108727 PH, December 11, 1986, copies of which we understand you already have). Accordingly, on the basis of 31 CFR 545.414, quoted above, the lobster tails and fish fillets under consideration, if processed as you describe, would

not be considered a "product of South Africa," for purposes of Public Law 99-440 and may be imported into the United States insofar as that law is concerned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward B. Gable, Jr.", with a large flourish at the end.

Edward B. Gable, Jr.  
Director, Carriers, Drawback  
and Bonds Division

42-2  
JUN 30 1971TCR 417.366 C  
011845

Mr. Louis A. Mezzano  
District Director of Customs  
Detroit, Michigan 48226

Dear Mr. Mezzano:

This concerns the tariff classification of yellow cake, a concentrate of uranium ore which is used in the production of uranium hexafluoride.

The yellow cake in question is produced by ammonia precipitation. Uranium ore is crushed, ground, and leached with sulfuric acid. The undissolved solids are then filtered out and the uranium-containing solution is concentrated by ion exchange, precipitation of the uranium with ammonia, filtration, and drying of the precipitate. The resultant product is yellow cake.

It is clear from the above description that the production process of yellow cake involves substantial chemical change, thus, removing it from the purview of Schedule E, Part 1, Headnote 2(a), Tariff Schedules of the United States (TSUS), which defines metal-bearing ores. This precludes classification under the free provision for uranium ore in item 601.57 of the schedules.

Yellow cake is a chemical concentrate consisting of a complex mixture of uranium oxides, hydrated oxides, and possibly ammonium diuranate. Inasmuch as it is used to produce uranium hexafluoride it meets the definition for other metal-bearing materials in Schedule E, Part 1, Headnote 2(h) of the schedules; and would appear to be classifiable under the provision for these materials in item 603.70, TSUS, with duty at the rate of 9 percent ad valorem.

However, the record shows that there is an established and uniform practice to classify yellow cake under item 422.50, TSUS, as uranium oxide, free of duty. The material consists substantially of a mixture of uranium oxides, and it is for this reason that it is desired. In these circumstances it cannot be concluded that the practice is clearly wrong. Therefore, yellow cake will continue to be classified as uranium oxide in item 422.50, TSUS.

This decision is being circulated to all Customs officers in order that the merchandise may be uniformly so classified at each port at which it may be entered.

Sincerely yours,

1s/ Edwin F. Ruino  
Acting Commissioner of Customs

broadest and the loudest. Whatever one thinks about the outcome of that debate, it made one thing very clear: there is no debate in our nation about apartheid itself, an assault on our values to be sure but, more important, an assault on the dignity and well-being of millions of black South Africans who suffer under it every day. Our debate was a strikingly clear reflection that Americans agree that ending apartheid and replacing it with a just and democratic system are moral imperatives of our time. Where we differed was on how to express our moral outrage in a way that offered the best prospect of producing the results we seek. In that sense, such debate is essential to our great democracy as it struggles toward that consensus without which our foreign policy remains hamstrung.

Thank you, Mr. Chairman.

CUSTOMS INFORMATION EXCHANGE  
U.S. Customhouse Bowling Green  
New York, New York 10004

422.52  
422.52

ORR Ruling 180-71  
April 30, 1971  
Docket File: MCS 417.366 H  
Date: JAN 21 1971

REFERENCE: Item 422.52, TSUS.

SUBJECT: Uranium Hexafluoride.

This decision is being abstracted as T.D. 71-83 (25).

Mr. B. J. Fowler  
Commercial Officer  
Canadian Embassy  
1746 Massachusetts Avenue, N. W.  
Washington, D. C. 20036

Dear Mr. Fowler:

Your letter of December 21, 1970, concerns the dutiable status of uranium hexafluoride produced by Eldorado Nuclear Limited of Port Hope, Ontario.

Uranium hexafluoride is classifiable under the provision for other uranium compounds in item 422.52, Tariff Schedules of the United States, and is free of duty.

This decision is being circulated to all Customs officers in order that the merchandise may be uniformly so classified at each port at which it may be entered.

Sincerely yours,

(Signed) Salvatore E. Caramagno

Director  
Division of  
Tariff Classification Rulings

-----  
Joseph Rosenworcel  
Director

NOTE: This circular may be released to the public only if the name and address of recipient and other identifying material are deleted.

## APPENDIX 7

## DEPARTMENT OF THE TREASURY RESPONSES TO QUESTIONS

July 10

URANIUM IMPORTS FOR PROCESSING AND REEXPORT

1. Has the Treasury Department applied the reexport exception to any other banned article in the Act?

RESPONSE: As stated in my written response to questions submitted by your Subcommittee and that of Congressman Bonker on June 11, 1987, the interim regulation on uranium ore and oxide, appearing in section 545.427 of the South African Transactions Regulations (the "Regulations"), was not applied to imports other than uranium ore and oxide.

2. In all the other countries which the U.S. has trade sanctions in place (i.e. Libya, Nicaragua, Afghanistan), has the reexport exception ever been evoked [sic]?

RESPONSE: No. Other sanctions programs of the type encompassed by the question were invoked by Presidential action, and do not involve the peculiar legislative history of the ban on uranium ore and oxide in the Act. Treasury does not have a trade sanctions program in place against Afghanistan.

3. When the plain language of the Act calls for the banning of uranium, how did the Treasury Department come to apply this purported exception? (NOTE: the colloquy is silent on uranium if witness refers to the Lugar-McConnell colloquy)

RESPONSE: This question was fully addressed in the March 10, 1987 Federal Register notice concerning the interim regulation on temporary uranium ore and oxide imports for processing and reexport, and the notice of July 7, 1987 on the expiration of the interim regulation (copies attached). The colloquy in question took place wholly within the context of debate on Senator Dole's proposed amendment to delete the uranium ore and uranium oxide import prohibitions from the Senate bill, and must be presumed to refer to the subject matter of that debate.

4. In your written responses to Subcommittee questions you stated that if South African uranium cannot be enriched for foreign end use DOE's foreign enrichment customers may obtain their enrichment services from overseas suppliers.

(i) Are there alternate sources of production available to replace South African uranium?

- 2 -

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to the Department of Energy ("DOE"), and have received the following information:

Adequate amounts of uranium can be supplied from the United States, Canada, Australia, Niger, and other countries to replace South African uranium. However, non-U.S. utilities have signed long-term contracts for the supply of uranium, and these utilities may be unwilling or unable to terminate the uranium supply contracts they have signed with their South African supplier. Since these foreign utilities would be able to terminate their DOE enrichment contracts, DOE could lose up to 30 percent of its enrichment business.

Now that South African-origin uranium ore and oxide cannot be imported into the U.S. for enrichment and subsequent exportation, foreign utilities may choose to obtain enrichment services from Eurodif (a French consortium), Urenco (a U.K., Netherlands and German partnership),<sup>1</sup> and Technasbexport (a Soviet enricher), or otherwise purchase needed commodities on the secondary market. The three primary suppliers of enrichment uranium, other than DOE, currently have excess production capacity of approximately 4 million SWU (separative work units) per year and, if expanded to the limits of their capabilities, could have as much as 12 to 16 million SWU per year excess supply in the 1990's. In addition, there is an estimated 14 million SWU available on the secondary market. Thus, the current enrichment supply available could absorb the estimated 3 million SWU associated with DOE's enrichment customers that are affected by the sanctions contained in the Comprehensive Anti-Apartheid Act of 1986.

(ii) Has the Treasury Department confirmed that third party countries will not terminate their South African contracts? Which countries are involved? How many contracts are involved?

RESPONSE: The Treasury Department has not been provided information on the intentions of affected countries and does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

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<sup>1</sup>  
Treasury is informed that Urenco's Dutch and German facilities no longer accept South African origin materials for processing.

The contractual options available under the specific terms and conditions of the foreign utilities' uranium supply contracts cannot be confirmed. However, several of DOE's foreign customers may find it more advantageous to take their conversion and enrichment requirements overseas as a package deal, rather than abrogate their uranium supply contracts. This could cause DOE substantial contract cancellation (\$200 - \$300 million or 20-30 percent of total commercial enrichment sales) and possible litigation. Thirteen of DOE's enrichment customers in Japan, Taiwan, Germany and Spain are affected by the South African sanctions.

(iii) Has the U.S. concern over contract sanctity also been carried over to coal, textiles and steel? Can you provide particulars? When [the] U.S. sanctioned [sic] Cuba, Libya, Afghanistan and Nicaragua did the U.S. make allowances for pre-existing contracts?

RESPONSE: The considerations underlying Treasury's decision to issue the interim regulation on uranium did not involve contract sanctity, but rather the conflicting legislative history relating to section 309 of the Act. Contract sanctity was not a factor in implementing other import bans under the Act, except in the case of iron, iron ore and steel, where contract sanctity for imports from South Africa was mandated by section 320 of the Act itself, as amended. As noted earlier, Treasury does not maintain a trade sanctions program against Afghanistan. As far as the other countries subject to our trade sanctions are concerned, we have not generally made allowances for contract sanctity in implementing the prohibitions on imports. We did provide limited contract sanctity for exports destined for Nicaragua when implementing the President's executive order imposing a trade embargo on that country in 1985.

(iv) If France, Britain, the Netherlands or Germany replaced the U.S. as the enricher of South African uranium would they be in violation of Section 402 of the Anti-Apartheid Act which authorizes the President to limit imports into the U.S. by countries which take commercial advantage of any U.S. sanctions or prohibitions?

RESPONSE: Treasury is not charged with implementation of section 402. The Subcommittee may wish to address this question to the Office of the United States Trade Representative ("USTR"), which has implementation responsibility for section 402 of the Act pursuant to Executive Order 12571 of October 27, 1986.

5. The interim rule expires July 1. Has the Treasury Department come to a determination whether to let the rule lapse?

RESPONSE: Yes. In a notice published in the Federal Register on July 7, 1987 (attached), Treasury announced that the interim regulation permitting the import of South African uranium ore and uranium oxide for processing and reexport had lapsed. Accordingly, there is a comprehensive ban on the importation of these commodities into the United States.

#### URANIUM HEXAFLUORIDE

According to the NRC, six of the eight pending applications for the importation of South African uranium ore are for uranium hexafluoride ("UF6"). These six would represent 73% of the amount imported -- a marked increase from 1985 and 1986 when UF6 comprised only 17% and 22% respectively of South African imports.

These startling statistics suggest to me that the industry is circumventing Congressional intent to ban uranium imports by jumping through a gapping [sic] loophole created by the Treasury Department.

(1) How does the Treasury Department interpret this shift in imports?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to the Nuclear Regulatory Commission ("NRC"), and have received the following information:

In most cases requests for import licenses are for broad import authority to cover a period of two to five years or longer, and do not represent requests based upon specific contract requirements. The broad licenses enable an agent, transporter or broker to present to a potential customer evidence that import authority exists at the time contract negotiations are undertaken. It is not unusual for the owner of nuclear material, especially a foreign organization, to require that an importing agent show evidence that United States import authority has been obtained before they will enter into shipping agreements.

Because of the competitive nature of the business, it is common to find that each of several agents competing for the same contract holds an import license. As a result, only one of the licenses is used.

With respect to the eight pending import applications, only two were based upon reasonably assured import contracts at the time of application. These were ISNMS87004 (Braunkohle Transport) and ISNMS87005 (EXXON Nuclear Co.), both covering material intended for import, fabrication and reexport to nuclear power plants in West Germany. The Braunkohle application was withdrawn from consideration after EXXON was

selected to handle the import. The other six applications received since December 31, 1986, are for broad authority for periods of two, three or five years. It is most improbable that the total amount of material represented by these requests would ever be imported.

It should be noted that the imports of South African origin uranium which took place during 1985 and 1986 occurred during a time when uranium imports were virtually unrestricted.

(2) Many experts in the nuclear field have stated that the nuclear industry has used this exception to stockpile large quantities of uranium and if the spigot was finally shut-off that there would be sufficient uranium to meet demand for 3-5 years. What is your assessment? Is the industry stockpiling? If Congress were to pass another amendment which unequivocally banned all uranium would this effectively sanction South Africa, or is the issue already moot?

RESPONSE: Treasury has no information on uranium stockpiling. In light of the lapsing of interim section 545.427 of the South African Transactions Regulations, however, the issue is moot. Other agencies may have a different view on this issue.

(3) In your written responses to Subcommittee questions you stated that the criteria for determining whether uranium has been "substantially transformed" is whether uranium hexafluoride is a new commercial product, having a name, character, and use different from the original uranium. Mr. Newcomb let's walk through this test.

- a.) One's called uranium oxide while the other is termed uranium hexafluoride. On balance not a great determinative factor--certainly not like a bolt of cloth and finished garment, or a roll of steel and an automobile body.

RESPONSE: The names of these commodities reflect their totally different chemical and physical properties, just as in the case of carbon monoxide and carbon tetrachloride. Thus, the name differences support a finding of substantial transformation.

- b.) Character--One's an oxide powder, the other a fluoride gas. On the surface this would appear to be the test's greatest hook. Yet the process to convert uranium oxide into uranium hexafluoride is neither difficult nor expensive. The cost of conversion to uranium hexafluoride represents only 2 percent of the overall cost of nuclear fuel.

RESPONSE: Differences in chemical character are unrelated to the cost of processing. Similarly, the extent of processing

is not measured by its cost relationship to the value of the finished product. According to DOE, enriched uranium fuel is very expensive. Although the conversion process comprises about two percent of the cost of producing the fuel, in absolute terms it is an expensive step, costing from \$600,000 to nearly \$1,000,000 for each year's order of fuel. The question of differences in character has to do with the structure and properties of the articles. A solid powder and a gas have undeniably different characters. This difference supports a finding of substantial transformation.

- c.) Use--On this point I see no difference. Both are used for nuclear fuel - uranium hexafluoride is simply in a more advanced processing stage. Oxide and hexafluoride forms of uranium are essentially interchangeable, with UF<sub>6</sub> commonly being "swapped" with oxide forms of uranium. One must keep in mind that uranium ore has virtually no market value until it is converted into uranium hexafluoride.

RESPONSE: Uranium oxide and uranium hexafluoride are completely different products and are not fungible in the marketplace. Uranium oxide cannot directly be enriched. Only uranium hexafluoride can be used in this essential step in the nuclear fuel cycle. This is a difference in use, and supports a finding of substantial transformation.

Mr. Newcomb, as I apply the test, I find it very difficult to justify calling uranium hexafluoride "substantially transformed."

- i.) Is the determination of calling uranium hexafluoride "substantially transformed" consistent with Congressional intent? It would appear to me and others that the purpose of the Act to sanction South Africa is only served if the provision is interpreted to cover compounds into which the oxide may be readily transformed.

RESPONSE: The language of Section 309 and established customs law leave little room for any other interpretation. It is important to emphasize that there are two separate issues involved in the question of whether uranium hexafluoride is covered by the Act. The first issue is partly legal and partly chemical; that is, do the terms "uranium ore" and "uranium oxide" define the same material as the term "uranium hexafluoride"? As a chemical matter, they do not. As a legal matter, Congress chose a narrow definition of those South African uranium articles to be banned, as opposed to the comprehensive language used in the same section for textiles and coal. We have found no legislative history to the Senate bill that indicates broader coverage than that of the plain meaning of the terms "uranium ore" and "uranium oxide." Thus, we find no basis for exclusion of uranium hexafluoride or other substantially different uranium products under section 309.

As to the second issue, certain forms of uranium produced from South African materials in third countries are considered under customs law precedents to be substantially transformed, so that their country of origin ceases to be South Africa for import declaration purposes.

#### ADDITIONAL QUESTIONS ON URANIUM

##### A. Uranium Hexafluoride

(1) What standards does the Treasury Department use to determine if a chemical compound has been "substantially transformed"? What is the origin of and basis for such standards?

RESPONSE: The standards employed by Treasury in determining whether or not a chemical compound has been substantially transformed, and the origin and basis of such standards, are set forth in specific guidelines in the Customs regulations that establish the criteria to be followed and provide a general definition of substantial transformation, and in court cases interpreting various customs laws.

The Customs regulations provide at 19 CFR 10.14(b): "Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process."

A review of the court cases shows that similar standards have been recognized by the courts over the years whether the question was one of drawback or country of origin. The most frequently cited decision in defining substantial transformation dates from 1908. "There must be a transformation; a new and different article must emerge, having a distinctive name, character and use." Anheuser Busch Brewing Association v. United States, 207 U.S. 556, 28 S. Ct. 204 (1908). Numerous court cases have followed this decision in defining substantial transformation down to the present time. See National Juice Products Association v. United States, 628 F. Supp. 978 (1986).

(2) In what other instances has the substantial transformation doctrine been applied to allow the importation into the United States of materials and products which would otherwise have been prohibited?

RESPONSE: It is used in any situation in which a prohibition is applicable only to certain countries. For example, under Headnote 4, part 5(b), Schedule 1, TSUS, entry of certain furskins from Russia or China formerly was prohibited. However, if a furskin had been transformed by manufacturing into a new article of commerce, it was no longer considered a furskin and thus was not a prohibited article.

(3) What are the grounds for the determination by the Treasury Department that uranium hexafluoride is a product which has been substantially transformed?

RESPONSE: The grounds for determining that uranium hexafluoride is a product which has been substantially transformed by a substantial processing operation are set forth in the answer to question number A(1).

(4) In making any determinations with respect to the substantial transformation of uranium hexafluoride, what consultations has the Treasury Department had with industry experts? With the Department of Energy? With the NRC?

RESPONSE: When originally made some 20 years ago, the determination to characterize uranium hexafluoride as substantially transformed uranium oxide was based on information from the industry concerning the manufacturing processes and chemical reactions involved. Our determination resulted from the application of an established principle of the Customs Service, the Treasury agency charged with making such determinations.

(5) What is the value added of the conversion process as a percentage of the final selling price of enriched uranium fuel?

RESPONSE: The conversion process comprises about two percent of the cost of producing the enriched uranium fuel, which may range from \$600,000 to almost \$1,000,000 for each year's order, depending upon the product enrichment value selected. However, value added is not usually a specific element in determining whether a product is substantially transformed under standing customs law and cases. It is one factor among several that may be taken into consideration when making a decision, but it is usually not the determining factor. The high cost of the plant and equipment required for the conversion process is, however, an indication that conversion is a substantial manufacturing operation, another of the indicia of substantial transformation.

(6) How is the market for uranium hexafluoride different, if at all, from the market for uranium ore and uranium oxide?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

Uranium ore and uranium oxide are useless in a uranium enrichment plant--only uranium hexafluoride can be used in such a plant. In that sense, the market for uranium hexafluoride is very different from the market for uranium ore and uranium oxide.

7) To what extent are fluoride and oxide forms of uranium interchangeable in the marketplace? How common are "swaps" of hexafluoride and oxide forms of uranium? For each of the years 1980 through 1986, approximately how much uranium hexafluoride was swapped for uranium oxide worldwide?

RESPONSE: The Treasury Department has no information responsive to this question and has not yet received a response to our informal referral of the Subcommittee's question to the NRC and DOE. Please contact the NRC and/or the DOE directly for information concerning this question.

8) For each of the years 1980 through 1986, how much uranium hexafluoride utilizing South African source material was imported into the United States? What was the dollar value of uranium hexafluoride imports in such years? What percentage were hexafluoride imports of the total quantity of South African material imported during this period? How do these figures compare with the amount of uranium hexafluoride utilizing South African source material which could be imported in 1987 under existing import licenses and pending import license applications?

RESPONSE: The Treasury Department has no information responsive to this question and has not yet received a response to our informal referral of the Subcommittee's question to the NRC and DOE. Please contact the NRC and/or DOE directly for information concerning this question.

(9) What U.S. utilities depend, to any extent, upon imports of uranium hexafluoride which utilizes South African source material? Approximately what percent of their total annual supply requirements does this material constitute?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

Since December 31, 1986, only three percent of the total uranium feed provided to DOE's enrichment facilities by domestic utilities was of South African origin. This small quantity was provided from inventories already located in the United States. It is DOE's understanding that no domestic utility is currently dependent upon imports of uranium hexafluoride utilizing South African source material, nor is any projected to be in the future.

(10) What are the benefits to the United States in allowing continued uranium hexafluoride imports if the Treasury Department's interim rule is retained? What are the negative consequences of allowing continued hexafluoride imports on the domestic conversion industry?

Mr. WOLPE. Thank you very much, Dr. Crocker. And now we'd like to turn to Mr. Keyes.

**STATEMENT OF HON. ALAN KEYES, ASSISTANT SECRETARY FOR INTERNATIONAL ORGANIZATIONS AFFAIRS, DEPARTMENT OF STATE**

Mr. KEYES. Thank you very much, Mr. Chairman.

Mr. Chairman, with your permission and that of the Committee, I would like to submit a prepared statement for the record, and just briefly summarize it if I can in my remarks.

Mr. WOLPE. Let me indicate, Mr. Keyes, that all of the written testimony that all the panelists have submitted will be included in the record in their entirety.

Mr. KEYES. Thank you.

The Comprehensive Apartheid Act included a sense of the Congress that the President should instruct the permanent representative of the United States to the United Nations "to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act."

Since the enactment of the Comprehensive Anti-Apartheid Act on October 2 of last year, the United States has twice exercised its veto on resolutions calling for mandatory sanctions against South Africa.

Our reasons for doing so, I think, are clear. First, in order to preserve the possibilities of flexibility in U.S. policy in response to changing situations and circumstances in South Africa, we believed that it would be unwise to enter into a regime of mandatory sanctions under the United Nations which it would not be easy or possible for us to reverse in accordance with those circumstances.

It's also important to note, of course, that the Security Council, operating as it does under the rubric which includes a veto of the permanent members and means that the Soviet Union would be able to exercise such a veto, by entering into a mandatory regime of U.N. sanctions, we would be subjecting our policy essentially to determinations made in the Kremlin, rather than in Washington.

In addition to that, however, there is also the fact that the process involved in coming to any agreement on such resolutions would imply and involve U.S. support for the overall U.N. approach to the question of South Africa. That approach is one which requires total isolation of South Africa, comprehensive sanctions against South Africa, and we believe that that kind of approach which goes well beyond even the limited sanctions that have been passed by the Congress would be destructive and counterproductive.

It would be destructive because that kind of a regime of comprehensive sanctions total isolation of South Africa which the proponents of such an approach say is directed against the South African government, would in fact be most damaging in its effects on the power base of South black Africans.

Historically, it has been quite clear that apartheid, though it makes attempts to exclude black people in South Africa from political participation, to segregate them in social ways, it has been unable to exclude their participation in the economic realm, and in

RESPONSE: The Treasury Department's rule on uranium hexafluoride was published in final form, so that imports of this product continue to be permitted. The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

Benefits to the United States include U.S. sales of \$200 to \$300 million for enrichment services. Furthermore, the U.S. is able to remain a reliable supply partner with allies such as Japan, Spain and Germany, which are supportive of U.S. nonproliferation policies. This relationship could be eroded if a ban on importation of South African uranium hexafluoride jeopardized existing commercial arrangements between the DOE and foreign customers. Negative consequences in terms of lost sales could be incurred by the domestic conversion industry if only uranium hexafluoride imports are allowed but not uranium ore or oxide imports for processing, and subsequent reexport to foreign customers.

(B) Imports for Processing and Subsequent Reexport

1) What foreign utilities have contracts to receive South African uranium which is enriched in the United States? What percentage is this of the utilities' total annual supply requirements?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

Utilities in Japan, Taiwan, Spain and West Germany currently have long-term South African uranium supply contracts and purchase their enrichment needs from the United States. Approximately 22 percent of total foreign utility uranium requirements in 1987 have been met from South African or Namibian source material.

2) Under what other circumstances, if any, have materials or products whose importation is otherwise prohibited into the United States been allowed to enter the United States in bond for processing and subsequent reexport?

RESPONSE: Please refer to the answer to the first question at page one of this submission.

3) What are the alternative sources of supply for South African uranium? Are there sufficient supplies to make up for any shortfall which might result from the banning of imports to the United States for processing and subsequent reexport? What assistance can the United States provide to foreign utilities in obtaining alternative sources of supply?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

Alternative sources of supply for uranium include the United States, Canada, Australia, Portugal, France and its African suppliers, Gabon and Niger. Current uranium supply capacity exceeds demand levels. However, the foreign utilities most affected by the sanctions have substantial financial obligations in terms of existing, long-term South African supply contracts. Foreign utilities will take steps that are advantageous to them and therefore may purchase their conversion and enrichment needs from European suppliers as a package deal rather than incur financial losses from cancellation of the contracts in South Africa. Thus, DOE could lose up to \$300 million in enrichment business and U.S. conversion companies would also be adversely affected.

4) For each of the years 1980 through 1986, approximately how much South African material was imported into the United States for processing and subsequent reexport? What was the dollar value of this material? What percentage were imports for processing and subsequent reexport of total imports of South African material during this period?

RESPONSE: The Treasury Department does not have information available to answer this question, and has not yet received a response to our informal referral of the Subcommittee's question to the NRC and DOE. Please contact the NRC and/or DOE directly for information concerning this question.

5) How much material to be imported under outstanding import licenses is intended for processing and subsequent reexport? How much material covered by pending import license applications is intended for processing and subsequent reexport?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to the NRC. The NRC has indicated that at this time there are no known plans to import any South African-origin uranium for any purpose under the existing licenses.

On May 14, 1987, the NRC forwarded a Demand for Information to each holder of an existing license requiring that each licensee submit to the NRC, in writing and under oath, an affirmation concerning:

a) the date, quantity and end user of any planned import of any form of uranium of South African origin, no later than 60 days in advance of each shipment date; and

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b) the date, quantity and end user of any form of uranium of South African origin imported since December 31, 1986, or, if no South African uranium has been imported since that date, a statement to that effect.

The NRC has not received notification of intent to import any South African origin uranium as required by the Demand for Information. Two importations of South African origin uranium have occurred since December 31, 1986, both for processing and reexport.

It is not possible to determine how much material covered by the pending applications is intended for processing and reexport since the licenses, with one possible exception, are in the nature of bulk licenses not usually supported by firm contracts for imports. One pending license for 168,000 kilograms of low-enriched material in the form of UF<sub>6</sub> is believed to be based upon existing contract arrangements. This is material intended for fabrication and reexport to a European utility. The NRC understands that no U.S. utility is dependent upon South African uranium at this time, nor is it aware of any domestic utility which is expected to rely upon South African imports for its future supply. There are existing supplies of South African uranium imported prior to January 1987, and these stocks may be used by some domestic utilities. However, this would represent a very small fraction of the total domestic requirements.

6) In 1986, imports of uranium from South Africa were approximately three times the amounts imported in each of the several years prior thereto. How much of a cushion, measured in years of supply, do these amounts of uranium imports provide for utilities with contracts to receive South African uranium?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to the NRC. According to the NRC, imports of South African origin uranium increased over similar imports in 1985, especially during the month of December 1986.

It is NRC's understanding that the accelerated pace near the end of 1986 was accounted for primarily by imports by Taiwan, and by utilities in Japan and Europe, seeking to deliver feed material for U.S. enrichment prior to the cut-off of imports on December 31 under the Comprehensive Anti-Apartheid Act of 1986. Based upon prior years' experience it seems probable that the quantity of material represents a one to two year forward supply. However, it is unlikely that ownership of the material is equally distributed among the utilities.

(C) General

1) How would you assess the stability of supply of South African uranium? Does it compare with other sources of supply?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

The stability or reliability of the supply of South African uranium is considered to be excellent, as are other sources of supply in the United States, Canada, Australia, Portugal, and France.

2) Approximately what is the dollar value to South Africa of its annual uranium exports? [How important is this to the overall foreign exchange position of South Africa?]

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to the Department of State ("State"), and have received the following information:

South Africa produced 12 million pounds of uranium in 1986, exporting 11.1 million pounds to the United States having a value of approximately 266 million dollars. This represents only two percent of South Africa's merchandise exports.

3) To what extent does South Africa's trade in uranium assist its nuclear industry? Its weapons program?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. We have referred this question informally to the State Department, which has informed us that this question cannot be answered on other than a classified basis.

4) Are you aware of any efforts in Western Europe or elsewhere to establish substitution arrangements under which non-South African-origin uranium would replace South African-origin uranium intended for conversion and enrichment in the United States? What action, if any, is the United States taking to discourage such arrangements?

RESPONSE: The Treasury Department has no information responsive to this question and has not yet received a response to our informal referral of the Subcommittee's question to the NRC and DOE. Please contact the NRC and/or DOE directly for information concerning this question. Treasury notes, however, that the practice of "flag swapping," in which governments agree to exchange the nationality of like quantities of nuclear

material to save transportation costs, does not alter the nuclear material's country of origin for U.S. Customs purposes.

5) Is it possible under existing procedures and regulations to determine the origin of converted and/or enriched material imported into the United States? What changes, if any, in enforcement procedures and regulations are needed to assure that distinctions can be made between South African-origin material and non-South African-origin materials?

RESPONSE: See answer below to question No. 6.

6) What percentage of South African-origin material which enters the United States, including any material intended for processing and subsequent reexport, is mined in Namibia? How does the United States determine whether material originating in South Africa is mined in Namibia? If existing procedures and regulations do not allow for such a determination, what changes in such procedures and regulations could be made to allow therefor?

RESPONSE: The Treasury Department does not have information available to answer the Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

For calendar year 1986, it is projected that approximately 450,000 kg or three percent of all uranium feed imported into the United States for enrichment at DOE's facilities was Namibian origin. All Namibian origin material has been supplied by foreign utilities for processing and subsequent export. The shipper of the material must designate the origin and enricher of the uranium upon its entry into the United States as provided under existing procedures and regulations.

7) If the Treasury Department's final rule on uranium hexafluoride continues in effect, and if its interim rule allowing the importation of South African uranium ore and oxide for processing and subsequent reexport is extended, what will the combined impact of these actions be on the total volume of South African imports into the U.S., including any materials intended for processing and subsequent reexport, expected in 1987 and subsequent years, as compared to 1986 and each of the prior six years?

RESPONSE: The interim rule has lapsed, so that its future impact is now a moot point. The Treasury Department does not have information available to answer the remainder of Subcommittee's question. However, we have informally referred the question to DOE, and have received the following information:

It is unlikely that the combined effect of the Treasury Department's final rule on uranium hexafluoride and the interim rule allowing the importation of uranium ore and oxide for processing and subsequent reexport would significantly change the total volume of South African imports into the United States in 1987 or future years.

## DEPARTMENT OF THE TREASURY

Response to questions submitted by the

SUBCOMMITTEE ON AFRICA  
 COMMITTEE ON FOREIGN AFFAIRS  
 UNITED STATES HOUSE OF REPRESENTATIVES  
 WASHINGTON, D.C.

July 17

July 17, 1987

LOBSTERS

3. In the case concerning the Customs investigation of lobster tail imports, your written response states that "Customs has no direct evidence" that the ship carrying the lobsters toward the U.S. was re-registered by South Africa. However, the Journal of Commerce reports that a Government investigator working on the case said he believes that the Cayman Islands firm owning the ship "is a phantom firm created to circumvent the embargo". The Journal also comments that there appear to be linkages between this company and Atlantic Fishing Enterprises in Capetown which admits "We have sold them some ships". Does Customs believe that there may well be a scheme here to circumvent the U.S. embargo though legal proof is currently insufficient?

RESPONSE: As we said in an earlier response to the Subcommittee's written questions, Customs has concluded an investigation concerning these allegations. Although the lobster in question was caught in or near the territorial waters of South Africa, the investigation determined that the lobster was neither caught nor processed by a South African flag vessel. Therefore, under existing Customs rulings pertaining to the origin of seafood, it was determined that the importation ban was not violated. Customs does not have information indicating the existence of a scheme to circumvent the U.S. embargo but is monitoring the situation.

4. In a letter of January 21, 1987, to Robert Follick of New York City, Edward B. Gable, Director, Carriers, Drawback and Bonds Division of the Customs Service states that lobsters from South African territorial waters may be imported into the U.S. even if they are caught by small vessels operated by South Africans, and stored, rechecked for weight and grading, and repacked for containerization in South Africa --- provided that they [are] otherwise processed (deheaded, washed, wrapped, preliminarily graded by weight, pre-packed) on non-South African flag vessels.

Do you think this matches the intent of Congress when it banned imports of lobsters and other foods from South Africa?

Was there any Congressional consultation before this policy was adopted?

RESPONSE: In the ruling to which the question refers, Customs determined that lobster and other fish products, substantially processed on board factory vessels that are owned by and documented under the flag of a country other than South Africa, are not "products of South Africa" for purposes of Public Law 99-440 and may be imported into the United States insofar as that law is concerned.

As far as we are aware, there was no consultation by Treasury with Congress before this ruling was issued. In implementing this and other sections of the Act, Treasury has followed the normal rule of statutory construction that, where Congress indicated no contrary intent, terms used without definition in the Act either have common meanings or, where available, those given them by the agency within the Federal Government which regulates the subject matter of the specific provision of the Act. The meaning of the term "product of South Africa" in the case of imports is determined by the Customs Service. Thus, the regulations issued by the Office of Foreign Assets Control provide that "[d]eterminations of country of origin for purposes of this part [i.e., part 545 - South African Transactions Regulations] will be made in accordance with normal Customs rules of origin" (31 CFR 545.414; 51 Federal Register 41906, 41909). Under normal Customs rules of origin, the country of origin of fish (including lobster) processed on board a processing vessel is determined by the flag of the processing vessel. This has been the long-standing Customs interpretation.

6. Isn't it true that the aforementioned policy is based on a 21 year old regulation of Customs that had nothing at all to do with sanctions and was merely for purposes of meeting a requirement for country of origin marking?

See our answer to question 5. The January 21, 1987, ruling of Customs (attached), described above, was based on normal Customs rules of origin, including country of origin marking requirements, as well as on a much broader body of United States and international law and custom.

In determining the normal Customs rules of origin for the lobster and other fish products described in the January 21, 1987, ruling, Customs reviewed previous rulings on the country of origin of such products. The earliest Customs ruling on this matter that Customs has cited was issued on February 25, 1966. In that ruling Customs held, very generally, that the country of origin, for marking purposes, of fish processed on board a processing vessel is that of the flag of the vessel on which they were processed, regardless of the flag of the

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catching vessel and whether the fish were caught inside or outside territorial waters or a national fishery zone. A copy of that ruling is attached.

The January 21, 1987 ruling is also consistent with normal Customs rules of origin pertaining to fish and fish products caught by U.S. flag-vessels. Customs has held that fish caught by U.S.-flag vessels in the United States fishery conservation zone and processed on foreign-flag processing vessels would not be considered the product of an American fishery but, instead, would be considered the product of the country of the processing vessel.

These country of origin rulings are based on Headnotes 1 and 2 of Schedule 1, Part 15A, Tariff Schedules of the United States (TSUS), which defines "products of an American fishery," for purposes of the duty-free treatment accorded such products by items 180.00-20, TSUS, and sections 10.78-79, Customs Regulations. Under these TSUS items, lobster or other fish caught by U.S.-flag fishing vessels in United States territorial waters or the United States fishery conservation zone and substantially processed on board a foreign-flag processing vessel would be considered the product of the country of the foreign-flag processing vessel. In the same manner, lobster or other fish caught by South African or other fishing vessels in South African territorial waters or the South African fishery zone and substantially processed on board a processing vessel other than a South African-flag vessel would be considered the product of the country of the processing vessel.

7. What is the recent value of imports of South African lobsters into the U.S. (pre- and post-sanctions)?

RESPONSE: Prior to the effective date of the Act, 2,476,603 pounds of lobster worth \$24,829,052 were imported from South Africa during 1986. No lobsters which are products of South Africa have been imported into the United States after October 2, 1986. Lobster and other fish products such as those considered in the January 21, 1987 Customs ruling may be imported into the United States because they are not considered products of South Africa under normal Customs rules of origin.

#### OTHER POSSIBLE EVASIONS OF IMPORT BANS

1. According to your written responses, Customs has initiated 19 investigations into possible violations of the Anti-Apartheid Act of 1986, of which 14 are active spanning the range from steel to textiles to krugerrands to oil and military goods.

Please describe in detail the case which has resulted in two individuals being indicted for attempting to export licensable technical data to South Africa through another country. (If appropriate, ask whether or not there was South African Government involvement here?)

RESPONSE: On March 12, 1987, a federal grand jury in Los Angeles returned a three-count indictment charging George M. Posey with conspiracy and two substantive violations of the Arms Export Control Act, 22 U.S.C. 2778. The indictment charges that on February 7, 1987, Posey and Edward J. Bush, who was indicted for the same offense on February 18, 1987, attempted to export military aircraft technical manuals to the Republic of South Africa and Argentina. Bush was arrested at Los Angeles International Airport on February 7, 1987 as he boarded a plane bound for Argentina. This case was investigated by the FBI and the U.S. Customs Service. The trial is set for July 21, 1987, in the United States District Court for the Central District of California. The Department of Justice may be contacted directly on this matter if any further information is desired.

2. Please provide specific examples (several) of the iron and steel products (e.g., tubes, wires, etc.), that are prohibited and allowed under your regulations from South Africa. What is the rationale used to make these distinctions?

RESPONSE: As I stated in the written response to the Subcommittee's question submitted prior to my testimony, Section 320 of the Act contains language clearly more limited than that of, for example, the agricultural and food ban in section 319. The selection of iron and steel products subject to the ban was made by reference to Part 2 of Schedule 6, Metal and Metal Products, of the TSUS, as well as by reference to sanctions on steel adopted by the European Coal and Steel Community and the British Commonwealth, and to the product coverage of the steel voluntary restraint agreement in force with South Africa. Basic iron and steel, commonly referred to as basic shapes and forms, including ingots, blooms, billets, slabs, sheet bars, plates, sheets and strips, wire rods, wire products, railway type products, bars, rods, castings, fittings, structural shapes, structural units and pipes and tubes, are included, as are iron ore, pig iron and foundry iron. Fabricated products of iron and steel are excluded from the ban on imports, based on the language of the statute ("iron and steel," rather than "steel products"). As in other sanctions programs, such as the Cuban nickel ban and the former ban on Rhodesian ferrochromium, ferroalloys are treated as articles of the element alloyed with iron, since that

element (rather than iron) accounts for the primary value and use of the import. Recently the Court of International Trade ruled against Treasury in a case under the Act involving prestressed concrete strand (a wire rope product). We had considered this to be a producer product, and included it within the ban on steel. The court disagreed, finding that prestressed concrete strand was not a basic steel product. Justice has filed a notice of appeal in this case. Springfield Industries, Inc. v. United States, C.I.T. No. 87-1-00087, Slip Op. 87-56 (May 11, 1987).

3. According to a December 11, 1986 story in Business Day (a South African publication), an Israeli-U.S. free trade agreement "is providing the perfect conduit for beleaguered South African manufacturers" and has sent Israeli-South Africa trade figures "rocketing" upwards of 70%. According to the President of the South Africa-Israel Chamber of Commerce "The free trade agreement gives South African entrepreneurs the opportunity to ship finished products (emphasis added) for 35 percent completion in Israel."

Do you or your colleague from the Commerce Department have any comment about the nature of the U.S.-Israeli free trade agreement and its possible unintended impact on South Africa's effort to circumvent sanctions? Would finished prohibited products from South Africa, with 35% completion in Israel, be allowed in the U.S.?

RESPONSE: The Treasury Department does not have information responsive to this question. However, I would refer the Subcommittee to a written statement dated June 5, 1987, from Michael B. Smith of the USTR on this matter, submitted earlier to the Subcommittee:

Concerning your question whether our import restrictions on South Africa are being violated by Israel or Israeli middlemen acting as a conduit for South African exports, I would note that the U.S.-Israeli Free Trade Agreement was approved by Congress. The implementing legislation provides that, in determining whether imports are of Israeli origin, the sum of the value of materials produced in Israel plus the derived costs of processing in Israel must be at least 35 percent of the appraised value of the good at the time it is imported into the United States. This calculation by law excludes profit and general expenses of doing business, and any other value additions which are not bona fide "costs of manufacturing the product."

It is Treasury's understanding that "finished products" of South Africa could not be imported as products of Israel.

fact the modern economic sector has been the arena in which black South Africans have been able to develop their most effective tools for struggling against the apartheid system.

In the organization of labor unions, in the growing consumer power of black South Africans which they have used in consumer boycotts, we have seen the development and use of a significant black power base developed organized and wielded by black South Africans themselves.

A regime of total and comprehensive sanctions which damaged the modern the economic sector, which resulted in the extensive loss of jobs by black South Africans, a lot of people look at that and say, well, that's going to hurt white South Africans. What it's really going to do is to destroy the power base of black South Africans, the one area within the context of South Africa and South African society where regardless of apartheid and in spite of apartheid, they have power and have been organizing to use it effectively.

We believe of course in the approach to South Africa, the aim has to be to strengthen the forces that oppose apartheid and most importantly to strengthen the forces that are going to be the basis for true democracy in the country. Those forces within the black community that have been operating with those goals have relied upon the kind of power that they can draw from the position of black South Africans within the modern economic sector.

We believe that it would be counterproductive to support a U.N. approach which is going to result in the destruction of that power base. So we have continued to oppose the U.N. approach because of the negative consequences that it is going to have for the very goals which it has professed to wish to achieve. That is to say for the goals of the establishment of a true democracy in South Africa that includes the legitimate participation of the black minority.

The kind of consequences that the sanctions regime would actually have as has been indicated in the draft report by the major labor union, Cosatu, would result in the loss probably of millions of jobs for black South Africans, would result in the destruction of the power base of black labor unions in South Africa. As a result of that of course, being deprived of the kind of relatively peaceful and militant tools that can be used to achieve change, we increase and heighten the likelihood that the only approach to that struggle would be a violent one.

Therefore, contrary to the claims that are often made in the United Nations that the sanctions approach is going to provide avenues for relatively peaceful change in South Africa, they in fact create an environment that is going to precipitate a violent cataclysm and destroy the very future that the black people of South Africa are struggling to achieve; a future of justice, a future in which they are able to enjoy the fruits of their full participation in a truly democratic system.

INVESTMENTS & LOANS

1. In your written responses there was an interesting note that G.P. Stud Farm Inc. of Burlingame, California, has applied for an exemption from the ban on new investment to cover an investment in the Gary Player Stud Farm, in which it owns a 50% interest.

As you know, Senator Lugar, Chairman of the Senate Foreign Relations Committee, stated on the Senate floor that the purpose of the exemption in question was to allow an extension of funds only "in the event of a flood, fire or other occurrence which would force the operation to shut down or operate at an uneconomical level."

Is this the criterion you are using to judge whether the investment in Mr. Player's Stud Farm, said to be for funding "operating losses" is permitted?

Have you made a decision yet on this filing of January 26, 1987? If so, what is it? If not, when will you act?

RESPONSE: Section 545.319(c)(2) of the Regulations permits contributions necessary to enable a U.S. controlled South African entity to continue to operate in an economically sound manner, while section 545.804 requires registration of such contributions. If a company is in danger of ceasing its operations or "operating at an uneconomic level," then a contribution designed solely to preclude this result is permissible. In the G.P. Stud Farm case, we were notified that money would be forwarded to South Africa to cover operating expenses necessary to maintain the subsidiary on an economically sound footing. The Department made no objection to this transfer, judging it to be permissible under the Regulations.

2. As you mention in your written responses, new loans by U.S. companies to enable their South African employees to purchase stock in subsidiaries are prohibited under the law which restricts capital transfers to South Africa. You also mention that you have examined IBM's proposed disinvestment transaction, which consists of a loan to an offshore trust, and are satisfied that the trust is not making such loans to South African employees. What then is the purpose of IBM's "disinvestment" if the trust is in fact controlled by IBM's designees, enables IBM to continue to reap profits in the form of dividends repatriated [sic] at the more favorable commercial rand rate of exchange, pledges to continue to purchase IBM supplies and services, and, as reported, does not include a final date for purchase of the stock in the subsidiary?

- 7 -

RESPONSE: Under the Act, Treasury has responsibility for enforcing the ban on new investment in South Africa, *i.e.*, the prohibition on loans or other extensions of credit, and on contributions or commitments of funds or assets. So long as factors constituting new investment are not present, disinvestment transactions are not regulated by the Act or by Treasury. The documentation furnished to Treasury in its review of IBM's South African divestiture did not provide for direct or indirect contributions of assets or extensions of credit in South Africa by any United States national, nor for transactions intended to evade the new investment or other prohibitions contained in the Act. Treasury's written opinion that the proposed IBM transactions would not violate the Act's new investment prohibitions was expressly based upon the specific documentation provided by IBM.

#### AGRICULTURE

QUESTION: Section 319 of the statute prohibits the import of any South African "agricultural commodity or product or any byproduct or derivative thereof." However, Treasury's South African Transactions Regulations--Product Guidelines (51 FR 41911) limits the description of "agricultural commodities, products, by-products, and derivatives thereof" to items that are classified under Schedule 1 of the TSUS. Because Schedule 1 is limited to primary agricultural products, and excludes many agricultural byproducts and derivatives, should not the product guidelines be amended to prohibit the imports of products intended by section 319?

RESPONSE: Schedule 1 of the Tariff Schedules of the United States is not limited to "primary agricultural products," unless one defines this term to include processed commodities such as shellac, cheese, alcoholic beverages, and refined vegetable oils. The definitional question whether, for example, a cotton sweater or a leather shoe is an "agricultural derivative," or is properly classified as a "textile" or "footwear" for purposes of the Act, was a difficult one. While one could ban virtually all trade with South Africa by defining broadly "byproduct or derivative" in section 319, and excluding all imports with any agricultural content, this would be at odds with the focussed manner in which Congress drew the specific import prohibitions in the Act. In the absence of guidance in the Act or its legislative history concerning the precise scope of section 319(1), Treasury utilized the Congressionally-drawn distinctions in the Tariff Schedules to resolve the issue, and for that reason used Schedule 1 to determine what is an "agricultural commodity or product or any byproduct or derivative thereof." By contrast, the prohibition against importation of articles "suitable for human consumption" in section 319(2) does not

correspond to any Congressionally-mandated classification or grouping within the Tariff Schedules, so that Treasury utilized a more functional description with examples as guidance to the public and to Customs officers under this subsection.

**Attachments**

## APPENDIX 8

## DEPARTMENT OF COMMERCE RESPONSES TO QUESTIONS

QUESTION 1:

How many licenses, of what value, did the Commerce Department approve for computer exports to South Africa in calendar years 1985 and 1986 and thus far in 1987? (Provide definition of "computer" used in these calculations.)

ANSWER:

Approved Individual Validated Licenses  
for South Africa

Calendar Year	No. of Licenses	value (\$ 000s)
1985	798	472,272
1986	1141	478,639
1/1/87-5/15/87	452	160,036

The definition of computers used for the Republic of South Africa includes everything described in Export Control Commodity Numbers (ECCN's) 1565A, Electronic Computers and Related Equipment, and 6565G, which is a special provision for South Africa and Namibia for Computers and Related Equipment excepted from 1565 due to their limited capabilities. Goods used to service and manufacture computers are controlled under ECCN 6594F. It should be noted that there were no approved individual validated licenses for ECCN's 6565G or 6594F for the time period covered.

Information from the Department's Office of Economic policy indicates the actual computer equipment exports to South Africa were \$115.8 million in 1985, \$119.3 million in 1986 and \$27,558 million in the first quarter of 1987.

QUESTION 2:

Of the computers licensed for export to South Africa this year, how many involved pre-licensing checks? What activities did these checks consist of and what technical background and training did the checkers have in anticipating possible diversion of computers to legally prohibited ends?

ANSWER:

Twenty six pre-license checks were initiated and ten pre-license checks were completed between January 1, 1987 and June 12, 1987 for export of computers to South Africa.

Our practice with respect to pre-license checks in South Africa is for each check to consist of an on-site visit by a U.S. Government employee who is a U.S. citizen. During the visit, this person meets with officials of the proposed end-user to verify the terms of the order and to see if the computer being ordered is appropriate to the activities of the end-user. The U.S. employee may also apply information about the proposed end-user available from trade sources, as well as all information he learns in conversations with company employees and any other information that he obtains during his visit. He applies this information to the question of the suitability of the proposed end user. In addition, the U.S. employee informs end-users in South Africa of U.S. policy towards apartheid enforcing agencies.

The persons conducting the checks are usually officers of the United States and Foreign Commercial Service. Occasionally, they are augmented by employees of the Office of Export Enforcement. These employees are selected on the basis of general background and the ability to deal with varied situations. Their knowledge of commercial transactions and business practice puts them in a good position to spot any irregularities. Given the variety of tasks that they need to perform, we think this is better than using specialists in one particular commodity. The persons making the checks are provided with information describing the equipment they are to locate and verify.

QUESTION 3:

In a communication to the staff of the Subcommittee on Africa of February 20, 1987, Ted Wu, Deputy Assistant Secretary for Export Enforcement, noted that ten license applications had been rejected or returned without action as a result of pre-license checks, all but one were rejected or returned for national security reasons. Please explain what kinds of national security problems arose out of these license applications? What proportion of the pre-license checks did these cases comprise?

ANSWER:

In evaluating the results of pre-license checks to South Africa, it is important to bear in mind that many commodities are controlled for both national security and foreign policy purposes. The rejections and returns without action identified in Mr. Wu's letter were based on such pre-license check results as: 1) the proposed consignee's claim to have never ordered the equipment; 2) the inability to locate the proposed consignee; or 3) cancellation of the order. We treated these responses as raising national security concerns because all of the equipment covered by these pre-license checks is multilaterally controlled by COCOM. Since the pre-license check could not verify the bona fides of the proposed ultimate consignee, and the items were controlled for national security reasons, we considered the potential for diversions to Communist Bloc countries via South Africa to be sufficient reason for the Office of Export Enforcement to recommend that the license not be issued.

In Mr. Wu's February 20 letter, we treated only the application where the pre-license check raised definite suspicions of potential diversion to a proscribed entity in South Africa as a foreign policy determination.

QUESTION 4:

According to the above communication, there were thirty-seven (37) post-shipment checks recently, of which three resulted in investigations. What proportion of total cases resulted in post-shipment checks? What progress has been made in the aforementioned investigations, and what kinds of problems were discovered in the post-shipment checks?

ANSWER:

It is not substantively meaningful to directly compare the number of post-shipment checks done in a particular time period with the number of licenses issued in that time period. Since previously issued licenses are selected for post-shipment verification, a post-shipment check may be done months or even years after the shipment takes place. Furthermore, foreign trade statistics indicate that not all transactions for which licenses are issued take place at all. That is because companies often apply for a license in anticipation of a sale which is under negotiation.

Mr. Wu's February 20th letter did not reference 37 post shipment verifications three investigations. However, we think that the question refers to three post-shipment check assignments that an OEE employee undertook in South Africa in March and April of 1986. These post-shipment checks related to investigations that were being conducted for national security reasons.

QUESTION 5:

Is it not the case that even post-shipment checks cannot discover time-sharing through telephone lines on these computers by apartheid-enforcing agencies?

ANSWER:

It is certainly true that post-shipment checks cannot provide perfect safeguard against the possibility that U.S.-origin computers will be used by proscribed entities. The person conducting the post-shipment check attempts to find out if the computer is at the end use location stated in the export license application and if it is being used by off site parties other than the end-user. He can do this by looking to see if there are modems indicating that the computer is accessible remotely, asking both management and rank and file personnel who the actual users of the computer are, reviewing customer lists and looking at logs recording computer usage. However, these techniques will not ferret out all possible unauthorized usage. In the end, the person doing the checking must make a judgment call based on what he/she actually sees and as to the truthfulness and reliability of the people to whom he talks and of the available documents he examines.

QUESTION 6:

The South African National Supplies and Procurement Act permits the South African Government to requisition the use of private companies' goods and services. Is this also an obstacle to end-use verification?

ANSWER:

We have not encountered any situation where the South African Supplies and Procurement Act has been interposed as a barrier to our conduct of post-shipment checks.

QUESTION 7:

Have any licenses been approved for the estimated 1,000 contractors to ARMSCOR or its subsidiaries in the weapons industry? Do you know who these contractors are?

ANSWER:

The Department's policy and the mandate of the Comprehensive Anti-Apartheid Act is to deny all applications to ship computers to ARMSCOR. Our policy is to deny almost all other applications to ship anything else to ARMSCOR. A review of our licensing data base since 1984 indicates that we have not approved any applications to ship anything to ARMSCOR. We also deny licenses to those subsidiaries that we know of. We do not know the estimated 1,000 contractors who work for ARMSCOR mentioned in the Committee's letter. If the committee will provide a list of the one thousand names that it has, we will be glad to look into this matter further.

It is for that reason that we have continued to oppose the counterproductive approach that the United Nations takes to this issue, and in addition, to the kind of constraints on our flexibility that it would represent, it is that reason that the Administration has taken the view that we have with respect to the recommendation made by the Congress.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Keyes follows:]

QUESTION 8:

In the above communication, Mr. Wu noted that on April 3, 1986 the Commerce Department's Office of Intelligence Liaison asked the intelligence community to pay special attention to evidence of diversion of U.S.-origin goods and technical data to apartheid-enforcing agencies. In addition, he noted a recent request to Customs that its attaches overseas "be vigilant" of diversion information and share any such information with the Commerce Department.

In response to these requests, has the intelligence community or Customs Service formally tasked its personnel in South Africa, Europe, Asia and elsewhere to make computer diversion to apartheid-enforcing agencies a priority? What specifically has been the response of the community and Customs to these requests?

ANSWER:

## INTELLIGENCE COMMUNITY

It would not be appropriate for us to comment on the internal procedures with which the intelligence community responded to our request. The intelligence community has been responsive to our requests, however, since we have received some intelligence information concerning potential diversions to proscribed entities in South Africa and we have paid special attention to or acted on those information items we find appropriate and practicable.

## CUSTOMS

We have been informed by the Customs Service that they have briefed the Customs Attaches on the Comprehensive Anti-Apartheid Act and directed that priority be given to identifying violations of these sanctions.

QUESTION 9:

According to the language of the Anti-Apartheid Act, computers may not be shipped to or for use by any Government entity in South Africa unless "a system of end use verification is in effect to ensure that the computers involved will not be used for any function of (an apartheid-enforcing entity). Yet Mr. Wu's February 20th letter states that, "It would be impossible to design a system that could guarantee no possible diversion would result". This seems to conflict with the law's words and the end-use verification system is "to ensure that the computers involved will not be used" (for enforcing apartheid). Do you agree that there is a conflict here?

ANSWER:

Mr. Wu's February 20th letter reflects the Department's view that the phrase "ensure against diversion" in section 301 of the Comprehensive Anti-Apartheid Act of 1986 should be interpreted reasonably. Absolute assurance against diversion can come only from 24 a day monitoring of every U.S.-origin computer which is clearly impossible. I assure you that the Department has taken the necessary steps to reasonably ensure that diversion does not take place by judicious use of pre-license and post-shipment verifications, and by using intelligence sources.

## APPENDIX 9

## DEPARTMENT OF COMMERCE RESPONSES TO ADDITIONAL QUESTIONS

QUESTION

If a U.S. firm were proposing to sell computers to a subsidiary of a major South African defense contractor, would you license that export? Given the legislation's thrust that other countries adopt the same sanctions as ours, would it be appropriate for the U.S. to discuss the issue with Japan?

ANSWER:

U.S. Export Administration Regulations prohibit the export of any item destined to or for use by police or military entities in South Africa. Supplement 2 to Part 385 of the Export Administration Regulations lists those entities which the Department considers to be police or military entities of South Africa, and the Armaments Development and Production Corporation (ARMSCOR) and certain of its subsidiaries are included in that list. If the Department were to receive an application for the preceding end-user or any other end-user which a pre-license check or intelligence has demonstrated to be a police or military entity in South Africa, the application would be denied.

The Department of State is the agency responsible for issues relating to foreign policy matters. Therefore, it is within that Department's purview to address the appropriateness of discussions with Japan.

QUESTION

You indicate that of the pre-licensing checks made last year, only one resulted in a rejection specifically related to the concerns for diversion in the Anti-Apartheid Act. Please provide details. Do you feel uncomfortable with the low rate of rejection as a result of the pre-license checks?

ANSWER:

The one pre-license check in question resulted in a license application being returned without action because the end user could not be satisfactorily identified and the commodity could be useful to suppliers of the South African military. We target pre-license checks for what we believe to be the higher risk transactions. We sent Special Agents to South Africa twice to be sure that the quality of the pre-license checks is as high as possible. It is not the purpose of pre-license checks to strive for either a high or a low percentage of rejections. The purpose of a pre-license check is to ascertain to the best of our ability, given existent limitation, the legitimacy of a proposed export from the United States.

QUESTION

According to Deputy Assistant Secretary for Export Enforcement Theodore Wu, there were only 37 post-shipment checks undertaken last year, and three resulted in unfavorable reports resulting in investigations. But all these were for "national security" (i.e. diversion to the Soviets) reasons rather than diversion to apartheid-enforcing entities. Please provide details of these cases. Are you disappointed or uncomfortable by the fact that in a nation pledged to sanctions-busting you have not uncovered a single case of diversion to apartheid-enforcing agencies?

ANSWER:

The three investigations, as noted, did not involve allegations of diversion to apartheid-enforcing entities. In addition, those three post-shipment verifications were part of on-going investigations. In one case, administrative proceedings have been instituted against a party located outside South Africa. There was not sufficient evidence to charge a party within South Africa. One investigation is still pending. In the third case, the Customs Service conducted the post-shipment verification and informed us that the computer, while not located at the licensed consignee, was located at a non-proscribed entity in South Africa.

We are continuing to improve the effectiveness of our effort at detecting violations of all export controls including controls on South Africa. Given available resources, our strong commitment to enforce the law and the overall results of our performance, I am proud of the work we have done and am committed to further strengthening our ability and performance. We have little or no control over the result of a given post-shipment check. If the check discloses no diversion we should be pleased that the law has not been breached. If the check discloses a violation, we would take appropriate enforcement action.

It should be borne in mind that post-shipment verifications in South Africa serve a dual purpose. They verify the details of the export transaction and they are a visible expression within South Africa of U.S. opposition to apartheid.

QUESTION

You mention that you've received intelligence on potential diversions to prescribed entities in South Africa, and have paid special attention or acted upon it. What have you done and in what cases?

ANSWER:

So far, the intelligence information has concerned possible methods that the South African Government might use to circumvent U.S. export controls. We use the information to scrutinize incoming export license applications.

QUESTION

Has the intelligence community sent out special guidance tasking personnel to pay special attention to evidence of diversion of U.S. goods or data of apartheid-enforcing agencies, as you've requested? Is this guidance currently operative?

ANSWER:

We are not privy to any special guidance or taskings that the intelligence community gives its members. I believe it would be more productive to direct such questions to the agencies in the Intelligence Community.

## APPENDIX 10

## DEPARTMENT OF DEFENSE RESPONSES TO QUESTIONS

1 JUN 1987

The Honorable Howard Wolpe  
 Chairman, Subcommittee on Africa  
 Committee on Foreign Affairs  
 House of Representatives  
 Washington, DC 20515

Dear Chairman Wolpe:

In response to the questions posed in your letter to me dated 28 May 1987, I submit the following:

Question(i): "Since October 2, 1986, has SAFAIR/GLOBE AIR assisted the contras, via L-100s leased to Southern Air Transport?"

Question(ii): "Since October 2, 1986, have any South Africans assisted the contras on behalf of the U.S. government?"

(i and ii) SAFAIR is a South African air freight company with a fleet of some 16 L-100s. To our knowledge, it is not affiliated with the South African Defense Force (SADF), although it does perform contract services for SADF, as one of many customers. DoD has not participated in or cooperated with SAFAIR or the SADF in alleged covert South African operations to assist the Nicaraguan "contras."

Question(iii): "Since October 2, 1986, has Colonel van der Westhuizen, the Director of South African Military Intelligence, any of his subordinates or any other high-ranking South African military officials, met in Central America (or any other place) with American officials?"

(iii) In the course of their normal duties, American military attaches in South Africa meet with Lieutenant General (formerly Colonel) van der Westhuizen, Secretary of the State Security Council, and with representatives of the Chief of Staff, Intelligence, and other elements of the South African Defense Force. American attaches and other DoD personnel around the world occasionally meet South African attaches at social gatherings wherever they are stationed. In Washington, my office and other Defense individuals on occasion meet with South African attaches accredited here. All of these meetings are conducted in accordance with the law and our policy guidance. No contact with South African Defense Force officials has been

reported in Central America, nor do we have any knowledge of such contact.

As a final note, your letter stated that the Secretary of Defense has "government-wide responsibility" for implementing the provisions of Section 322 of the Act. We in Defense do not view our responsibilities in that way. While the Department of Defense did in fact accept responsibility as the lead agency for Section 322, limiting cooperation with the South African Defense Force, we did so in anticipation that any such cooperation would most likely occur between the military representatives of the two countries. We did not accept, nor did the Administration intend we accept, any oversight responsibility over other departments or agencies of the government. Further, neither we nor any of the other departments or agencies understand Section 322 of the Act to imply mandatory and all-inclusive supervision by the Department of Defense over other departments. Executive Order 12571, distributed to all relevant departments and agencies, directs implementation of the Comprehensive Anti-Apartheid Act, and states that each agency is responsible for taking all steps necessary for implementation. This view has been reviewed and reaffirmed by the Department of State and by the National Security Council staff, in preparation for the 16 June 87 hearing.



JAMES L. WOODS  
Deputy Assistant Secretary  
for African Affairs

INTERNATIONAL  
SECURITY AFFAIRS

## OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-2400

02 JUL 1987

The Honorable Howard Wolpe  
Chairman, Subcommittee on Africa  
Committee on Foreign Affairs  
House of Representatives  
Washington, DC 20515

Dear Chairman Wolpe:

In response to the questions posed in your letter to me dated 19 June 1987, I submit the following:

Question (1): DoD's position, I understand, is that DoD's oversight responsibilities cover only DoD's activities, and that this position has been reviewed and affirmed by the Department of State and by the NSC.

How exactly did DoD arrive at this position? Please detail the discussions which occurred with State, the CIA, the NSC or any other entities on this question. Which Administration officials decided that Defense's responsibility is restricted to DoD's activities alone?

For what stated reasons has this decision been reached?

Has this policy been reached solely with reference to Defense, or does it apply to all departments?

Response (1): As you know, the legislation itself does not assign responsibility for most individual sections to specific agencies of the Executive Branch. During the process of drafting the implementing Executive Order, the Department of State recommended delegating the implementation of certain provisions to appropriate Departments and further recommended the establishment of an Interagency Coordinating Committee, chaired by State, to "ensure effective and coordinated implementation of the Act."

In reviewing the State draft E.O., we noted that Section 322 was not assigned to any agency. I therefore suggested that Defense assume responsibility for that section. That recommendation was approved within DoD and then in the interagency review and is reflected in the E.O. as finally issued.

In our discussion and coordination of the draft E.O. and after the actual E.O. was issued, we assumed in accordance with the

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normal policy of the Executive Branch that each Department would be responsible for its own compliance with all applicable provisions of the Act. As stated in Section 1 of the E.O.: "All affected Executive departments and agencies shall take all steps necessary, consistent with the Constitution, to implement the requirements of the Act." We assumed that DoD would be the lead agency in the sense that any initiatives in potential conflict with Section 322 would be most likely to originate as military-to-military proposals and would be called to the attention of my office which has policy oversight for the Secretary of Defense on African affairs.

I should refer also to Section 12 of the E.O., which establishes an Inter-Agency Coordinating Committee, under the Chairmanship of the Secretary of State, which, inter alia, "shall monitor implementation of the Act..." As Assistant Secretary Crocker stated during your recent hearing, this Committee has in fact served that function and has acted generally to devise and monitor the means of effective compliance with the Act. This is an additional reason why we believe that Defense was not intended to have authority over the activities of other agencies, even though they might fall under the prohibitions of Section 322.

Frankly, when we received the letter from the Subcommittee Chairmen, we were surprised at the interpretation that DoD should exercise oversight over other executive agencies on implementation of Section 322. At that time, in preparing the Defense response, I or my staff cleared that response specifically with my superior, Assistant Secretary Armitage, with Assistant Secretary Crocker, with State Legal Affairs, with Ambassador Herman Cohen who is the senior Africa specialist on NSC staff, and of course with the OSD General Counsel's office - specifically with the Office of the Assistant General Counsel for International and Intelligence Affairs. I also provided a copy of my proposed reply to CIA which, in keeping with its standard policy, said that it had no comment.

In sum, it remains our interpretation that Defense has responsibility to ensure that its agencies and offices fully comply with Section 322, but that other executive agencies are themselves responsible for ensuring their own compliance as required by law.

With regard to other departments, I must therefore refer you to the departments in question or to the Department of State in its capacity, under Section 12 of the E.O., as overall coordinating body for implementation of the Act.

**Question (2):** In your written response you acknowledge that SAFAIR possesses an (un)usually large fleet of 16 L100s, and that it performs contract defense services for the SADF.

**PREPARED STATEMENT OF AMBASSADOR ALAN L. KEYES, ASSISTANT SECRETARY FOR  
INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE**

Mr. Chairman, I am honored to have been invited by this Committee to discuss the Administration's position on Section 410 (c) of the Comprehensive Anti-Apartheid Act and the issue of UN mandatory sanctions against South Africa. In setting forth the Administration's position, I will be compelled by the nature of the subject to touch upon the broader question of the efficacy of sanctions in general as a means for promoting democratic change in South Africa.

Background

Section 410 (c) of the Comprehensive Anti-Apartheid Act (CAAA) states the sense of the Congress that the President should instruct the Permanent Representative of the U.S. to the UN "to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act."

Since enactment of the CAAA on October 2 of last year, the U.S. has twice exercised its veto on resolutions calling for mandatory sanctions against South Africa. On February 20, 1987, the U.S. vetoed an apartheid resolution calling for mandatory selective sanctions. Of our allies, the UK and the FRG also voted against, while France and Japan abstained and Italy voted in favor. On April 19, 1987, the U.S. voted against a Namibia resolution calling for mandatory

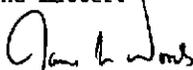
-- precisely what defense services does SAFAIR perform for the SADF? What is the ownership structure of SAFAIR Freighters? What is the history of its relationship to the South African government?

-- given the presence of U.S. military attaches in South Africa, and given the size and apparently strong reputation of SAFAIR as a proprietary of the South African military, I would be startled if DoD were not informed of SAFAIR's incorporation in the United States in 1983 and its subsequent leasing of 3 L100s to Southern Air Transport, for use in the Contra resupply. Is DoD completely uninformed of these transactions? If not, can DoD confirm that the supply of SAFAIR planes resulted from CIA officer Duane Clarridge's 1983 visit to South Africa?

**Response (2):** According to information available to the Department of Defense, SAFAIR LTD., based at Johannesburg, is a wholly-owned subsidiary of Safmarine, which also owns two commuter airlines, Air Cape and Namibia Air. Safmarine is a private shipping company. The Industrial Development Corp., a semi-government agency, had owned a percentage of Safmarine, but around 1983 divested itself of these shares because of Safmarine's involvement in casino operations. SAFAIR is a general freight handler having contracts with the private sector and the SAG. Formed in 1969 with a single L100-20 Hercules, today Safair runs a fleet of 15 L100-30s and a single L100-20. Four planes do contract flying for the SADF, apparently flying non-military loads such as food, mail and dependents between South Africa and Namibia.

As of 1986, 5 aircraft were leased to various operators. "World Airlines Fleets," 1985 edition, lists 3 former SAFAIR L100-30's as being operated by Southern Air Transport (construction/serial numbers 4565, 4590, 4558). We have no further information to confirm or deny the possible use of these aircraft in a Contra-connection or the involvement of the SAG in their lease.

As noted in my response to the first question, DoD does not believe it has a charter under the Comprehensive Anti-Apartheid Act to monitor the movements or activities of CIA personnel. We have no further information on the matter.



JAMES L. WOODS  
Deputy Assistant Secretary  
for African Affairs

## APPENDIX 11

## U.S. DEPARTMENT OF TRANSPORTATION RESPONSES TO QUESTIONS

June 4, 1987

The Honorable Howard Wolpe  
Chairman  
Subcommittee on Africa  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Wolpe:

This letter is in response to the questions that your Subcommittee has posed to the Department of Transportation regarding the implementation of the Comprehensive Anti-Apartheid Act of 1986 in your May 28, 1987 letter to Assistant Secretary Matthew Scocozza.

The questions posed by the Subcommittee are: Is the U.S. firm Southern Air Transport using SAFAIR maintenance facilities in South Africa for its L-100 Hercules aircraft or any other aircraft? If so, is this a violation of Section 306's prohibition of the take off or landing of U.S. aircraft in South Africa?

By Executive Order issued October 27, 1986, the President directed the various agencies with responsibilities under the Anti-Apartheid Act to carry out those functions. On October 28, 1986, the Department of Transportation issued an order which, among other things, directed interested persons to show cause why the Department should not, as required by section 306(b) of that Act:

prohibit the takeoff and landing in South Africa of any aircraft by an air carrier owned, directly or indirectly, or controlled by a national of the United States or by any corporation or other entity organized under the laws of the United States or of any State.

On October 30, 1986, Southern Air Transport filed a comment in response to the show cause order, requesting an exemption so that its L-100 Hercules aircraft, when operating in Africa, could land and takeoff from the SAFAIR maintenance facility in South Africa solely for maintenance work. It noted that the closest facility which could perform maintenance work on the Hercules aircraft, other than the SAFAIR facility, was in England.

On October 31, 1986, the Department issued an order making final its proposed findings in the show cause order. The Department stated at page 6 of that order:

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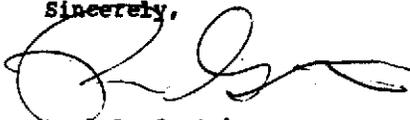
With regard to the request of Southern Air Transport for an exemption to allow it to land and takeoff in South Africa solely for maintenance work, we will not grant it the blanket exemption it requests. Section 306(c) provides that exceptions can be made by the Secretary to handle "emergencies in which the safety of an aircraft or its crew or passengers is threatened." Carriers may, consistent with section 306(c), apply on a case by case basis for an exemption from the condition imposed by this order.

Therefore, in order to use SAFAIR maintenance facilities, Southern Air Transport would be required to file with the Department a request for an emergency exemption. Neither Southern Air Transport, nor any other carrier, has requested an emergency exemption, and the Department has not granted any.

The Department has no information indicating that Southern Air Transport has been using SAFAIR maintenance facilities in South Africa for any of its aircraft. Were Southern Air Transport, or any other U.S. carrier, to land or take off from South Africa without a specific exemption from the Department, such carrier would be in violation of its certificate of public convenience and necessity, which the Secretary conditioned in compliance with section 306(b)(3) of the Anti-Apartheid Act of 1986.

I hope that this information will be of assistance to your Subcommittee.

Sincerely,



Paul L. Gretch  
Director  
Office of International Aviation

## APPENDIX 12

DEPUTY UNITED STATES TRADE REPRESENTATIVE, EXECUTIVE OFFICE  
OF THE PRESIDENT RESPONSES TO QUESTIONS

June 5, 1987

The Honorable Howard E. Wolpe  
Chairman, Subcommittee on Africa  
House Foreign Affairs Committee  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of May 28, inviting USTR to testify at hearings of your subcommittees on implementation of the Comprehensive Anti-Apartheid Act of 1986 and requesting responses to certain questions on USTR's implementation of its responsibilities under that Act and the Executive Order 12571. Unfortunately scheduling conflicts for the date of your hearing will preclude participation by USTR at that time. However, I also understand that other executive agencies from the Administration will be in attendance at the hearing. I am enclosing with this letter responses to your written questions, and USTR would be pleased to respond in writing to any further questions you may have if this would assist your hearing. I would in any case like to take the opportunity of this response to describe USTR's important, but rather limited specific responsibilities under the law, which should obviate the need for re-scheduling to hear USTR testimony, in particular at this time.

As you know, in addition to the President's general direction that all members of the executive branch implement the requirements of the Comprehensive Anti-Apartheid Act, the Executive Order delegates to USTR specific implementing authority for the sugar quota allocation provisions of section 323 and for section 402, except that the President retains authority to decide on the imposition of import restrictions under the latter section. As you will observe in the attached responses to your questions, implementation of section 323 is essentially a mechanical step of transferring South Africa's previous sugar quota to the Philippines, an action which was accomplished immediately in accordance with the Act.

USTR's functions under section 402 are to advise the President with regard to his authority under that section to limit imports of products or services of a foreign country "to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition imposed by or under this Act." This section, in our understanding, is not

The Honorable Howard E. Wolpe  
June 5, 1987  
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directed at violations of U.S. sanctions under this act, such as violations of the U.S. import, export and investment restrictions.

Separate enforcement powers are provided under the Act for such violations of the specific sanctions by those subject to the Act. Rather, Section 402 is directed at the more difficult issue of foreign countries gaining commercial benefit because they no longer face U.S. competition as a result of sanctions imposed under the Act, even though those U.S. sanctions do not apply to the foreign countries.

As the Committee is doubtless aware, it would be a very serious step for the United States to impose punitive trade sanctions against our trading partners in order to coerce them to impose sanctions on a third country. All countries, not least the United States, are sensitive regarding attempts to coerce behavior or actions to which they have not agreed. We have strongly opposed even lesser attempts by other countries to induce U.S. companies to follow their economic sanctions on a third country. We must also recognize that trade sanctions in such circumstances are contrary to international trading rules, and are likely to lead to counter-retaliation against U.S. exports.

These considerations do not mean we should rule out any exercise of import restrictions against other countries in the circumstances set out in section 402. These considerations do argue for a careful approach in the implementation of section 402, always bearing in mind that our objective is not a conflict with our trading partners but rather an effective coordinated approach in our goals with respect to change in South Africa.

In the implementation of our responsibilities under Executive Order 12571 with respect to section 402, the Administration has called to the attention of foreign countries both the provisions of section 402 and the more general adverse reaction in the United States if other countries are seen to be profiteering from U.S. sanctions on South Africa. In addition, USTR officials have called this provision to the attention of foreign trade officials and advised them of our concerns. I understand that State Department officials here and abroad have delivered a similar message to foreign countries.

As a small office, USTR is necessarily dependent in large part on other agencies of the government and the private sector for information regarding alleged profiting by foreign countries as a result of U.S. sanctions. We would also welcome timely information

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June 5, 1987  
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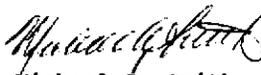
that may come to the attention of Congress, while recognizing the difficulty we all share in obtaining hard reliable information in this regard.

At this stage, less than eight months after enactment, I think it would be premature to reach any general conclusions that particular foreign countries are benefitting from or taking commercial advantage of U.S. sanctions so as to warrant consideration of U.S. import restrictions under section 402. For the relatively brief period in which this Act has been in effect, we do not have statistical evidence or other hard information at this time which would warrant further investigation of particular countries. I would also note that the analagous private right of action created under section 403 has not yet been invoked by private parties, nor have private companies brought to our attention any allegations under section 402.

It is, of course, similarly premature to conclude that no foreign country is benefitting from, or otherwise taking advantage of sanctions imposed under this act, much as we all might hope that none would do so. We know from experience with other sanctions, including sanctions on South Africa that pre-date the Act, that the intended economic effect of our actions can be undermined by others. Let me assure you, therefore, that although we see ample reasons for caution on the part of the President in the exercise of the authority conferred by section 402, it is not our intention to white-wash behavior of foreign countries in determining whether their activities would be actionable under section 402.

I would repeat that we would be pleased to respond to any further questions of the sub-committees related to USTR's implementation of its responsibilities under the Act and the Executive Order.

Sincerely,



Michael B. Smith

cc: The Honorable Dante Fascell  
The Honorable William Broomfield  
The Honorable Dan Burton  
The Honorable Toby Roth

## Response to Questions

1. USTR transferred the remainder of South Africa's sugar quota for 1986 to the Philippines as soon as the Act became effective. As a result, the Philippines was permitted to ship an additional 15,019 short tons of sugar to the United States in 1986, in addition to its normal quota. The Philippines derived some benefit from this quota increase, although actual Philippine shipments fell short of the permitted quota increase by 2,799 tons. In 1987, the Philippines is allocated a quota of 15.8 percent of the global U.S. quota, which includes its normal 13.5 percent share of the global U.S. quota plus the 2.3 percent share formerly allocated to South Africa.

Unfortunately, because the 1985 Farm Act required a substantial reduction in global U.S. sugar imports for 1987, the larger Philippine percentage share of those imports accorded by section 323 nevertheless still resulted in a substantial decrease in the Philippine quota for 1987, from almost 247,000 tons in 1986 to 143,780 short tons in 1987. The impact of transferring South Africa's quota to the Philippines in 1987 is thus only to partly mitigate a substantial decrease in the Philippine quota as compared to 1986. In short, the Philippines in 1987 receives a slightly larger share of a much smaller pie.

2. We have provided general comments on the scope of our responsibilities with regard to section 402 in the letter to which these specific responses are attached. We would note further that we are not in a position to investigate all press reports of whatever source in implementing our responsibilities.

(a.) The press report you refer to of course predates the Act. In any event, Hitachi and BASF voluntarily discussed with the Department of State the question of sales of computers to South Africa. The companies deny selling to the South African military or police and have asserted that they have no intention of selling such products to South African entities which we sanction. They have further volunteered to inform us in advance of sales to South African entities where there might be any question that sale to the entity would be proscribed for U.S. nationals under the Act (As you know, U.S. restrictions on computer products are directed at particular entities in South Africa, rather than a general U.S. export ban). We have found no information to contradict these assurances to date. These companies have noted that they have a far more substantial stake in the U.S. market which they would not wish to imperil in any sense for the sake of the South African market.

USTR has not compared our regulations on computers with those of Japan, Germany, or other countries, a step that would be warranted if we had evidence that foreign countries were benefitting from U.S. sanctions in this regard. We do not interpret section 402

as authorizing retaliation against other countries merely because their governmental sanctions do not mirror those of the Comprehensive Anti-Apartheid Act. Similarly, we have not investigated separately the relationship of Perasetel to the South African Government, although we have called your allegation to the attention of other government agencies.

(b.) We are not sure of the accuracy of the precise data you have cited from a media report concerning the growth of Taiwan's exports to South Africa in the period prior to enactment of the Act. We were aware generally, as was the Congress, that United States exports of these products have declined more than could be accounted for by restrictions on sales to particular South African entities. The decline prior to the Act may reflect also an unfavorable exchange rate and U.S. export control regulations generally on high technology products, which also have cost U.S. sales in other markets.

It is premature at this point to make a determination whether or not other countries have taken commercial advantage of sanctions imposed by the Act. With particular regard to the computer products restrictions, the fact that our own restrictions depend on the South African entity will admittedly make the determination more difficult, as increased gross sales by other countries by itself would not necessarily mean that another country was taking advantage of U.S. sanctions under the Act, nor the converse. As more data becomes available, this will facilitate USTR's function, but we have no illusions that obtaining reliable information in usable form will be an easy task, and we will count on the help and information of other agencies in this task.

(c.) Your question seems to concern whether our import restrictions on South Africa are being violated by Israel or Israeli middlemen acting as a conduit for South African exports. That question is better directed at the Department of the Treasury, which has responsibility for enforcement of our import restrictions. I would note that the U.S.-Israeli Free Trade Agreement was approved by Congress. The implementing legislation provides that, in determining whether imports are of Israeli origin, the sum of the value of materials produced in Israel plus the derived costs of processing in Israel must be at least 35 percent of the appraised value of the good at the time it is imported into the United States. This calculation by law excludes profit and general expenses of doing business, and any other value additions which are not bona fide "costs of manufacturing the product." "Finished products" of South Africa could thus not be imported in this way and qualify as products of Israel.

You may wish to direct further inquiries to the Department of the Treasury or the Customs Bureau if you believe you have evidence of violations of U.S. import restrictions. Your question is indicative of the problems we and the Congress could face if we

rely on fragmentary press articles of dubious reliability. We do not interpret section 402 as authorization to extend the import restrictions on South Africa to goods which are legitimately of Israeli origin.

(d.) These inquiries are also better directed to Treasury and Customs officials responsible for enforcement of our import restrictions, since the allegations you refer to in unnamed press reports concern violations of U.S. import restrictions. Customs can determine whether goods that are legally of South African origin are being entered under fraudulent country of origin markings contrary to our sanctions. As in the case of your question regarding Israel, we would note that the Act does not prohibit imports that contain or are processed from South African goods if they have undergone substantial transformation in another country to qualify as products of such other country.

(e.) and (f.) Foreign countries could potentially benefit by investing in South Africa and by making loans to South Africa. We do not at this time have information that would enable us to advise the President whether any country is benefitting from new investment or loans as a result of the prohibition of new U.S. investment (other than to black-owned firms) and the prohibition of U.S. loans to the South African Government or entities controlled by the South African Government. While we cannot launch a special investigation for every press report, we would be grateful for any more specific information the Committee may have.

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comprehensive sanctions. The UK and the FRG also voted against, while France, Italy and Japan abstained.

The Administration's view

So much by way of background. What must now be explained is the why and wherefore of the Administration's policy. Why has the Administration not acted on the sense of the Congress, as expressed in Section 410 (c) of the CAAA? Why, in other words, does the Administration oppose the imposition of mandatory UN sanctions against South Africa?

The Administration's policy rests on a variety of considerations, both specific and general. I shall first discuss the specific considerations.

To begin with, there is the problem of the mandatory character of the proposed sanctions. Mandatory sanctions would deprive the Administration of flexibility in dealing with a situation which is neither static nor simple. Mandatory sanctions would lock us into a posture that could easily become inappropriate as conditions and circumstances change in South Africa.

Furthermore, mandatory sanctions would almost unavoidably

increase the scope of Soviet influence in the region. The Soviet Union is, after all, a permanent member of the Security Council. The Soviet Union would therefore play a role in any determination by the Council of whether progress toward democracy was or was not taking place in South Africa. Given the divergence of U.S. and Soviet interests in the region, and in view of the peculiar way in which the Soviets choose to define democracy, it is hard to imagine that the U.S. and the USSR would be able to agree on a yardstick by which to measure whether sufficient progress toward democracy had been made to warrant lifting the Council's sanctions. The imposition of mandatory sanctions would, therefore, almost certainly subject the conduct of U.S. foreign policy to unacceptable influence by the Soviet Union.

UN mandatory sanctions and the future of democracy in South Africa

On a more general level, imposition of mandatory UN sanctions could involve the U.S. in support of the UN's overall approach to the South African issue. That approach involves sanctions that go well beyond the limited steps envisioned by U.S. legislation. It calls for total economic and diplomatic isolation of South Africa, including economic sanctions aimed at completely crippling the South African economy. Such an

approach would not only be ineffective as a means for promoting democracy in South Africa, it would actually be counterproductive from the point of view of the stated objectives of the sanctions advocates themselves. Thus, the Administration opposes the UN approach because we believe it is fundamentally mistaken, and it works against rather than for the prospects full democracy in South Africa.

U.S. and other limited international sanctions have now been in place for nearly a year. They have had none of the effects their sponsors predicted they would have. Sanctions have put little or no effective economic pressure on the South African business community or the apartheid regime; they have not changed the policies of the South African government; they have not strengthened the forces of democratic reform. On the contrary, sanctions have contributed to poverty and unemployment among blacks; they have contributed to the hardening of white attitudes, as evidenced by the electoral successes of the pro-apartheid Conservative Party; and they have undercut rather than strengthened U.S. influence with Pretoria. Given this record, it is reasonable to assume that the comprehensive, total isolation approach advocated in UN resolutions would have even more negative consequences.

My colleague, Assistant Secretary Crocker, has already

testified on some of the harmful consequences of the sanctions approach. Here I would just like to make three observations in support of his earlier testimony.

First, comprehensive sanctions would contribute to unemployment among black workers, especially in the labor intensive sectors of the South Africa economy. The recent draft report sponsored by COSATU, the militant labor federation, is quite clear on this point. The report even cites the prediction of one economist that the imposition of comprehensive sanctions would result in the loss of some 2 million jobs by the year 2000.

Second, total disinvestment would harm black workers in several ways.

In some cases black workers have already suffered because of the failure of the new South African owners to abide by fair employment practices. For example, after General Motors sold its South African operation in 1986, the new managers fired over 500 workers who went on strike over pension benefits they lost as a consequence of the GM pullout.

Moves toward disinvestment have also resulted in loss of jobs. For example, when Ford's South African subsidiary merged

with a locally owned car company in 1985, it promised no large-scale retrenchment. But in June 1986 the new company, in order to eliminate redundancy in its operations, closed Ford's old auto plants in the Port Elizabeth area, depriving 3,000 workers of their jobs in a city whose unemployment rate was already over 50 percent.

Finally, disinvestment has resulted in the loss of Sullivan-type education and training programs. Virtually every one of the divested U.S. subsidiaries that were in the Sullivan Code program have terminated their participation in the program. It is estimated that U.S. Sullivan signatory firms have spent close to \$200 million on job training and education programs for blacks in the workplace and in the townships. Thanks to disinvestment, this irreplaceable source of economic assistance to blacks is now in jeopardy.

My third point is one that has been virtually overlooked in the sanctions debate so far, yet I believe it is the most important consideration of all. Sanctions and disinvestment are harmful above all because they tend to weaken and destroy the most effective power base of the black population in South Africa.

The apartheid regime was able to exclude blacks from

political power and to fetter their lives with all manner of discriminatory social regulations. The one area from which blacks could not be totally excluded was the economy, particularly the modern and dynamic sectors of economy. It is in the economic area that blacks have made their greatest gains against the apartheid system, and it remains the indispensable foundation of their strength in carrying on the struggle for a fully democratic society.

At first it was only the commercial and manufacturing sectors of the South African economy that sought ways to dilute, circumvent or repeal the verticle and horizontal restrictions placed upon black labor mobility by apartheid regulations. But as mining and agriculture have become more mechanized and more in need of skilled labor, these sectors too came to appreciate the need to relax and repeal such apartheid regulations as the job color bar, the influx controls, and the ban on black unionization.

If the South African economy grows and develops, the need for skilled black workers and black managers will increase. If more blacks find gainful employment, they will have greater opportunities to develop further the power of black labor unions. If blacks become wealthier, they will be better able to exert their power through consumer boycotts.

The key to democratic progress in South Africa, in other words, is black empowerment. This can only take place under conditions of economic growth. Sanctions and disinvestment, to the extent they are effective, undermine such growth. They are destructive of the black power base in South Africa, which exists presently in the modern economic sector. Thus, in terms of their actual effects, comprehensive sanctions and disinvestment, such as those advocated in the UN's anti-apartheid strategy, would actually weaken rather than strengthen the forces opposing the apartheid system.

Mr. WOLPE. Thank you very much, Mr. Keyes.

We'd like to turn now to Mr. Richard Newcomb, the Department of the Treasury, the Office of Foreign Assets Control.

**STATEMENT OF RICHARD NEWCOMB, DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY**

Mr. NEWCOMB. Thank you, Mr. Chairman, members of the Committee.

My name is Richard Newcomb, and I am the Director of the Treasury Department's Office of Foreign Assets Control.

I'm pleased to be with you today to discuss the Treasury Department's efforts to implement the Comprehensive Anti-Apartheid Act.

The Office of Foreign Assets Control has the responsibility for administering those sections of the Act that the Secretary of the Treasury was delegated authority to implement by the President.

We are supported by the Customs Service, whose role in the South African sanctions is to identify and prevent U.S. importation or exportation to South Africa of products controlled under the regulations which implement the Act.

I would like to provide for this subcommittee a brief overview of actions we have taken. I should begin, however, by mentioning that on three occasions in late 1986, we conducted extensive briefing and consultation sessions concerning proposed Treasury implementation measures with members of the Staffs of the House Foreign Affairs Committee and the Senate Foreign Relations Committee.

Under Presidential delegations of authority, Treasury's implementation responsibilities include most of the Act's import prohibitions and all of the Act's restrictions on loans and new investments. Treasury has acted to ensure that all provisions of the Act for which it has enforcement responsibility were swiftly and effectively implemented.

On October 3, 1986, the day after enactment, Customs telexed instructions to all field offices requiring the exclusion of goods of the types prohibited under the Act and the detention of all other imports of South African origin until a determination could be made by the State Department as to which organizations were parastatal organizations.

On November 19, 1986, the day after technical corrections to the Act were signed into law, we published our first set of regulations under the Act implementing those immediately effective provisions for which we were responsible.

These regulations modified preexisting executive branch sanctions on the importation of South African Krugerrands, and on loans to South African Government and to entities owned or controlled by it, to comply with the altered scope of the sanctions under the Act.

The regulations also covered the Act's prohibition on importation of articles from South African parastatal organizations, agricultural products and articles fit for human consumption, iron and steel and sugar.

On December 29, our second set of regulations were published, adding provisions dealing with financial and investment restric-

tions of the Act. These regulations prohibit the receiving or holding of non-diplomatic deposit accounts of the South African Government by U.S. depository institutions, and the making of new investments in South Africa.

The final prohibitions implemented by Treasury are the bans on the importation of uranium ore, uranium oxide, coal and textiles, which became effective on December 31, 1986. The telex instructing Customs Officials on implementation of these prohibitions was dispatched on that day. Amendments implementing these bans were published by Foreign Assets Control on March 10, 1987.

The implementation of the prohibition on imports of uranium ore and uranium oxide was the subject of careful consideration by Treasury. Because of uncertainty over Congress' intent in enacting the ban on imports of uranium ore and oxide, we requested public, including Congressional comment, on the correct construction of the ban.

For the period necessary to receive and consider comment, Treasury has preserved the status quo with respect to uranium ore and oxide and imports for processing and reexport. Treasury took this action because the domestic uranium conversion industry and the Federal Government's enrichment industry would be seriously injured in a manner unintended by the Congress if imports for processing and reexport were barred through a mistaken interpretation of the Act.

Given the relatively short period in which temporary imports are allowed under the interim regulation, the action would have only an insignificant impact on the overall sanctions program if it were determined to be contrary to Congressional intent. Approximately 200 persons have filed comments on the interim regulation and these comments are now under active review and consideration.

A decision on the proper interpretation of this section, Section 309, is expected prior to the interim regulation's expiration on July 1st.

Since the effective date of the Act, the Customs Service has initiated 18 domestic investigations concerning possible violations of the Act. The Rome Customs Attache has a further eight investigations in progress. The active investigations concern, among other things, diamonds, steel, textiles, agricultural products, Krugerrands and exports of various other prescribed products. The schemes employed include transshipment through various countries and false declaration of origin.

Implementation of Treasury's areas of responsibility under the Act is a challenging task. Nonetheless, Treasury has taken all steps required to ensure that the provisions of the Act for which it has responsibility are fully implemented.

We are committed to comprehensive implementation and aggressive enforcement of the Act.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Newcomb follows:]

PREPARED STATEMENT OF R. RICHARD NEWCOMB, DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

Chairman Bonker, Chairman Wolpe, and Members of the Subcommittees:

My name is R. Richard Newcomb and I am the Director of the Treasury Department's Office of Foreign Assets Control, a position I have held since January of this year. I am pleased to be with you today to discuss the Treasury Department's efforts to implement the Comprehensive Anti-Apartheid Act of 1986 (the "Act").

The Office of Foreign Assets Control ("FAC"), within the Office of the Assistant Secretary for Enforcement, has responsibility for administering those sections of the Act that the Secretary of the Treasury was delegated authority to implement under sections 3 and 10 of Executive Order 12571. My statement this morning will outline my agency's role in enforcing the Act.

FAC dates from 1950, when President Truman imposed an assets freeze and trade embargo against the People's Republic of China and North Korea during the Korean War. It is a successor to the office that administered the broad trading with the enemy and alien property program during World War II.

FAC implements sanctions under the International Emergency Economic Powers Act, the Trading With the Enemy Act, and various other statutes with respect to, inter alia, Cuba, North Korea, Vietnam, Cambodia, Libya, Iran, Nicaragua, and South Africa.

In enforcing the various sanctions, the staff at FAC is supported by the U.S. Customs Service, which has broad overall enforcement responsibilities regarding imports into and exports from the United States. The Customs Service's role in the South African sanctions is to identify and prevent U.S. importation, or exportation to South Africa, of products controlled under the South African Transactions Regulations (the "Regulations") which implement the Comprehensive Anti-Apartheid Act. Thus, for example, Customs will detect, interdict, and detain for possible seizure, forfeiture, and imposition of penalties, any covered products of South African origin.

Before answering your questions on Treasury's implementation of the Act, I would like to provide the Subcommittees with an overview of the actions we have taken. I should begin by mentioning that on three occasions in late 1986, FAC conducted extensive briefing and consultation sessions concerning proposed Treasury implementation measures with members of the staffs of the House Foreign Affairs Committee and the Senate Foreign Relations Committee, as well as with members of the personal staffs of interested Representatives and Senators. We have endeavored to keep the channels of communications open with the Congress throughout the implementation process, answering hundreds of Congressional and referred constituent inquiries since the Act's passage.

#### Specific Implementation Actions

Under Presidential delegations of authority in Executive Order 12571, Treasury's implementation responsibilities include most of the Act's import prohibitions, and all of the Act's restrictions on loans and new investments. Treasury has acted to ensure that all provisions of the Act for which it has enforcement responsibility are swiftly and effectively implemented. On October 3, 1986, the day after enactment, the Customs Service telexed instructions to all Customs field posts, requiring the exclusion of goods of the types prohibited under the Act and detention of all other imports of South African origin until a determination could be made by the

State Department as to which organizations are "parastatal organizations" under Section 303 of the Act. Exports to South Africa of crude oil and refined petroleum products -- an area regulated by the Commerce Department -- were halted by Customs unless proof was presented that a shipment was pursuant to a prior contract, as required by the Act. The pre-existing ban on military imports, incorporated into the Act, was retained under regulations of the Bureau of Alcohol, Tobacco and Firearms.

On November 19, 1986, the day after technical corrections to the Act were signed into law, FAC published its first set of regulations under the Comprehensive Anti-Apartheid Act, implementing those immediately effective provisions for which Treasury was responsible. These regulations modified pre-existing Executive Branch sanctions on the importation of South African Krugerrands, and on loans to the South African Government and to entities owned or controlled by it ("SAG"), to comply with the altered scopes of these sanctions under the Act (Act, secs. 301 and 305). The regulations also covered the Act's prohibitions on importation of articles from South African parastatal organizations (Act, sec. 303), agricultural products, and articles fit for human consumption (Act, sec. 319), iron ore, iron and steel (Act, sec. 320), and sugar (Act, sec. 323). A set of Product Guidelines was published with the November 19 regulations, to provide the public with specific information on the tariff schedule numbers of

products excluded from the United States by the Act. Separate regulations, published simultaneously, prohibit the importation of Soviet gold coins (Act, sec. 510).

On December 29, 1986, FAC's second set of regulations was published, adding provisions dealing with financial and investment restrictions of the Act. These regulations prohibit the receiving or holding of non-diplomatic deposit accounts of the South African Government by U.S. depository institutions (Act, sec. 308), and the making of new investments in South Africa (Act, sec. 310). All banks known to hold diplomatic or consular accounts of the SAG were contacted in advance of the effective date, and advised to submit licensing requests to FAC if they wished to retain those accounts. FAC continues to monitor the licensed accounts.

The final import prohibitions implemented by Treasury are the bans on the importation of uranium ore, uranium oxide, coal, and textiles, which became effective on December 31, 1987, ninety days after enactment (Act, sec. 309). A telex instructing Customs officials on implementation of these prohibitions was dispatched on December 31, providing product definitions to supplement initial guidance provided in a November 14 telex to the field. Amendments implementing these bans were published by FAC on March 10, 1987, together with Product Guidelines containing the tariff schedule numbers for covered articles.

The implementation of the prohibition on imports of uranium ore and uranium oxide was the subject of careful consideration by Treasury. As noted in the "Supplementary Information" section in the March 10 Federal Register notice, the Treasury and State Departments received from Senators McConnell and Lugar, respectively, copies of a colloquy among themselves and Senator Ford on the topic of the uranium ore and uranium oxide ban. They stated that this colloquy had been omitted by error from the daily edition of the Congressional Record for August 15, 1986. The colloquy, which the Senators urged be reflected in Treasury's implementation of this ban, states that the Act's import bans are intended to affect only articles imported for domestic U.S. consumption, but not South African articles imported for U.S. processing and reexport. A statement by Senator Kennedy in the Congressional Record for October 18, 1986, denied that this colloquy had ever taken place, and indicated that Senator Kennedy and others would have opposed the policy stated in the colloquy had it actually occurred.

Because of uncertainty over Congress's intent in enacting the ban on imports of uranium ore and uranium oxide, we requested public (including Congressional) comment on the correct construction of the ban. For the period necessary to receive and consider that comment (through July 1, 1987), Treasury has preserved the status quo with respect to uranium ore and uranium oxide imports for processing and reexport.

Treasury took this action because the domestic uranium conversion industry and the Federal Government's enrichment industry could be seriously injured in a manner unintended by the Congress if imports for processing and reexport were barred through a mistaken interpretation of the Act. On the other hand, given the relatively short period in which temporary imports are allowed under the interim regulation, the action would have only an insignificant impact on the overall sanctions program if it were determined to be contrary to Congressional intent. Approximately 200 persons have filed comments on the interim regulation, and these comments are now being considered by FAC. A decision on the proper interpretation of section 309 is expected prior to the interim regulation's expiration on July 1.

On March 13, 1987, FAC published amendments to the Regulations and Product Guidelines on agricultural imports, permitting the importation of the hides and skins of animals that are taken from the wild and are not the product of animal husbandry.

On April 9, 1987, Treasury transmitted to the Congress a report concerning the feasibility of prohibiting accounts of all South African nationals in U.S. banks, as required by section 507 of the Act. Treasury concluded that such a prohibition would impose burdensome costs on U.S. financial institutions with no real assurance that evasion could be

effectively prevented. Also, since approximately 90 percent of South African deposits outside that country are in non-U.S. banks, such a prohibition would have little impact on the South African economy.

Since the effective date of the Act, the U.S. Customs Service has initiated eighteen domestic investigations concerning possible violations of the Act. As discussed below, the Rome Customs Attache has a further eight investigations in progress. Of the eighteen domestic investigations, four are closed and the others are actively being pursued. In one active investigation, two individuals have been indicted for attempting to export licensable technical data to South Africa through another country.

One closed investigation concerned allegations that South African lobster was being imported under false country of origin declarations. As explained in our written responses to questions from the Subcommittees, Customs' investigation did not substantiate these allegations.

Another investigation involving South African steel was closed after it was determined that the transaction occurred prior to the effective date of the import prohibition. A third investigation was closed when allegations could not be substantiated that South African broomcorn was being transhipped through Ethiopia. The last closed investigation

involved two small shipments of tapestries which were falsely declared as to country of origin. The investigation has been closed and the merchandise detained by Customs, following the importer's failure to provide certificates of origin or to claim the merchandise.

The active investigations concern the following allegations:

-- South African diamonds: Transshipment through the United Kingdom and false declaration as to origin. Although initially investigated for violation of the Act, this action is now being pursued under other Customs laws;

-- Steel products: One case involves a purchase now believed to have occurred prior to the effective date of the prohibition, so that no violation is likely. The second case involves an allegation of a false declaration of country of origin;

-- Textiles: Three cases involve allegations of false country of origin declarations;

-- Other cases concern allegations of false country of origin declarations with respect to apple semi-concentrates, chairs, and sports equipment;

-- Krugerrands: Exportation from the United States, manufacture into jewelry, and reimportation. Preliminary indications are that there is no violation;

-- Exports: The final three investigations involve alleged exports of petroleum products, weapons, and aircraft parts to South Africa.

In addition to the above investigations, the Office of the Customs Attache, Rome, Italy, which has investigative responsibility for Africa, has eight investigations involving South Africa arising under the Act. Of these eight inquiries, one investigation concerns transshipment of military commodities to the South African Government. Three additional investigations involve textiles which are allegedly manufactured in South Africa, transshipped through other countries and entered into the United States with false declarations as to country of origin. Four other investigations involve allegations that South African steel is being exported to other countries for transshipment to the United States. To date, in three of these steel cases, investigations have not substantiated the allegations. The other steel case is still under active investigation.

Implementation of Treasury's areas of responsibility under the Comprehensive Anti-Apartheid Act of 1986 is a challenging task. Nonetheless, Treasury has taken all steps required to ensure that the provisions of the Act for which it has responsibility are fully implemented. We are committed to comprehensive implementation and aggressive enforcement of the Act.

Thank you. I will be pleased to respond to your questions.

Mr. WOLPE. Thank you very much, Mr. Newcomb.

We will begin with the testimony of Mr. Freedenberg. About a minute or two after the bell, if you haven't concluded, I'll have to recess briefly, but the hearing will be resumed as soon as Congressman Crockett returns so he will precede me back to the Chair.

Mr. Freedenberg.

**STATEMENT OF HON. PAUL FREEDENBERG, ASSISTANT SECRETARY FOR TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE**

Mr. FREEDENBERG. Thank you, Mr. Chairman.

I'm pleased to appear before this Committee to talk about the Department of Commerce's implementation of Sections 304 and 321 of the 1986 Comprehensive Anti-Apartheid Act.

I have filed my written statement with the Committee, and I shall now summarize the key points of my written statement, and then respond to your questions.

At the outset, I'd like to say that the Department of Commerce is committed to implementing the Act faithfully and diligently to the best of our ability with the resources available.

Let me address Section 304, the new prohibition on exports to or for the use by apartheid enforcing entities of goods or technology intended for the manufacture of computers.

The new prohibition on goods or technology intended to manufacture computers eliminated a potential loophole in restrictions of U.S. origin computers and technology. We interpreted this new prohibition to mean that exports of computer manufacturing items to or for the use by apartheid enforcing entities would be disallowed, as well as exports of manufacturing items to third parties to be used to manufacture computers intended for such entities.

This is consistent with our previous interpretation of identical language relating to computer servicing items in the 1985 Executive Order restrictions.

Pursuant to Section 304, we use four means of end-use verification. Before the license can be issued, (1) the proposed consignee must first provide a written assurance that the goods will not be diverted to an apartheid-enforcing entity, the police or the military, or any entity involved in sensitive nuclear activities, and to agree to cooperate with our post-shipment inquiries before the license can be issued.

(2) Some proposed transactions are subject to prelicense on-site checks by U.S. personnel to verify the proposed end use and end user.

(3) Certain transactions also are subject to post-shipment verification by U.S. Government personnel;

(4) Finally, in certain cases, we require exporters to provide post-shipment certification that the goods have not been diverted to proscribed entities, with verification of the basis for such information.

As to pre-license checks and post-shipment inquiries, our practice and policy concerning South Africa is also generally applicable to other countries.

Let's turn to prelicense checks.

Our prelicense checks and post-shipment inquiries are initiated by the Office of Export Enforcement via specific request to our embassies and consulates. Generally, the personnel who make these checks are either officers of the Commerce Department Foreign Commercial Service or of another federal agency. They have knowledge in business practices a useful expertise in detecting diversions.

In addition, from time to time, we send specialists from the Office of Export Enforcement to augment their efforts. These specialists are trained in export control work, and have provided valuable assistance to our diplomatic posts. In all cases, the prelicense and post-shipment check activities undertaken by Commerce officers abroad, are subject to the guidance and direction of the Chief of Mission of the foreign post in question.

Generally, a prelicensed check involves an on-site visit to the premises of the proposed end user by a U.S. Government employee who has been provided with relevant background information and applicable instructions. During the visit, the officer conducting the check learns as much as possible about the nature of the end-user's business and reputation to determine his suitability as a recipient of U.S. origin products.

As for South Africa, since the beginning of this year, OEE has initiated 26 pre-licensed checks of proposed computer exports and has completed 17. Pending license applications related to the remainder of checks will not be acted on until the checks are completed.

Similarly, with regard to post-shipment verification, the program also entails on-site visits by U.S. Government employees. Before making the post-shipment check visit, the employee conducting the check is provided with a description of the merchandise in question and other pertinent background information.

Our post-shipment verification activity in South Africa increased significantly in response to the Executive Order 12532 of September 9, 1985. It increased further in response to the Comprehensive Anti-Apartheid Act.

For example, in calendar year 1985, we completed eight post-shipment verifications in South Africa; in 1986 we completed 23. From January 1, through June 15 of this year, we've initiated 53 post-shipment verifications and completed 33.

It's relevant to note that South Africa accounts for about one-third of the post-shipment verifications that we've initiated worldwide so far in 1987, and about 40 percent of those conducted worldwide this year.

Mr. WOLPE. I will have to interrupt you at this point, and recess the hearing in order to make the vote. But as soon as Congressman Crockett returns, the hearing will resume.

[Whereupon, a brief recess is taken.]

Mr. BONKER. The subcommittees will reconvene. This is a hearing conducted by both the Subcommittee on Africa and the Subcommittee on International Economic Policy and Trade, which I chair.

My apology to the witnesses for not being present earlier. This will be a long hearing, so we shall proceed without Mr. Wolpe who will join us momentarily.

Unfortunately, I'm so fresh to this meeting, that I don't know who is testifying or where we are in the process.

Mr. Freedenberg.

Mr. FREEDENBERG. Yes.

Mr. BONKER. Nice to see you.

Mr. FREEDENBERG. I was in the middle of my testimony.

Mr. BONKER. Then you may continue, sir.

Mr. FREEDENBERG. OK, thank you.

Since 1985, the Office of Export Licensing has not received any license applications for exports to South Africa of computer servicing or manufacturing equipment to apartheid enforcing agencies.

#### INDIVIDUAL VALIDATED LICENSES

In 1985, the Department approved 798 individual validated licenses for the export of computers to South Africa. In 1986, 1,141 for computer exports were approved. Since January of this year, 452 license applications were approved for computer exports.

The number of applications does not necessarily represent the number of licensable exports actually undertaken by the business sector because there are times when licenses are issued but the final shipment is not made.

Finally, in the interests of time, I'll turn to the subject of refined petroleum products, which is Section 321, the ban on exports of crude oil and refined petroleum products.

Because the Statute did not define the term, refined petroleum products, nor did the legislative history provide any specific guidance, it was necessary for us to establish the actual list of products intended to be covered by Congress.

Reference to controls on petroleum and petroleum products is found in the short supply controls in the Export Administration Act and in four corresponding commodity control list entries. We used this as the basis to subject commodities to the ban on crude oil and refined petroleum products.

However, we omitted five specific commodities in Group Q of the short supply list because they're not hydrocarbons.

On the other hand, our decision to exclude petrochemicals was based on the fact that petrochemicals have historically been excluded for export control purposes from the definition of refined petroleum product.

In conclusion, I want to emphasize again that we are committed to faithfully and diligently enforcing the law.

We've taken specific measures calculated to produce the best results with the available resources, given other export control requirements mandated by Congress.

I believe our effort reflects carefully planned and systematically executed measures to carry out the intent of Congress.

Thank you.

[Prepared statement of Mr. Freedenberg follows:]

## PREPARED STATEMENT OF HON. PAUL FREEDENBERG

Thank you Mr. Chairman. I am pleased to appear before this Committee to talk about Trade Administration's implementation of sections 304 and 321 of the 1986 Comprehensive Anti-Apartheid Act (CAAA).

At the outset, I would like to say that Trade Administration is committed to implementing the Act faithfully and diligently to the best of our ability, with the resources available. In fact, even before the passage of the CAAA, we instituted, under the Export Administration Act and the International Emergency Economic Powers Act, certain enforcement and end-use verification steps which I will describe here today. The CAAA codified certain existing control measures and added two new requirements to existing export control regarding South Africa: (1) prohibiting exports of goods or technology intended for the manufacture of computers "to or for use by" apartheid-enforcing entities; and (2) prohibiting exports of crude oil and refined petroleum products.

Let me begin by addressing section 304 of the CAAA, the new prohibition on exports "to or for use by" apartheid-enforcing entities of goods or technology intended for the manufacture of computers.

Well before enactment of the CAAA, the Administration had in place Regulations that prohibited exports to apartheid-enforcing entities of computers, computer software, and goods or technology intended to service computers. The new prohibition on "goods or technology intended to manufacture computers" eliminated a potential loophole in restrictions of U.S.-origin computers and technology.

(Previously, because foreign policy controls toward South Africa did not apply on exports to apartheid-enforcing entities of computer manufacturing equipment, the possibility existed that any such equipment could have been legally exported to those entities that enforce apartheid to be used to make computers, thereby defeating the regulatory objective of our computer export controls.) We interpreted this new prohibition to mean that exports of computer manufacturing items "to or for use by" apartheid-enforcing entities would be disallowed, as well as exports of manufacturing items to third parties to be used to manufacture computers "intended for" such entities. This is consistent with our previous interpretation of identical language relating to computer servicing items in the 1985 Executive Order restrictions.

Section 304 of the CAAA also states that U.S. computer goods and technology "may be exported . . . to or for use by" a Government entity not considered to be apartheid-enforcing "only if a system of end-use verification is in effect." In this regard, we have

four means of end-use verification in place: (1) the proposed consignee must provide a written assurance that the goods will not be diverted to an apartheid-enforcing entity, the police or the military, or any entity involved in sensitive nuclear end uses (hereinafter referred to as "proscribed entity"), and agree to cooperate with our post-shipment inquiries before the license can be issued; (2) some proposed transactions are subject to pre-license on-site checks by U.S. Government personnel to verify the proposed end-use and end-user; (3) certain transactions are subject to post-shipment verification by U.S. Government personnel; and (4) in certain cases, we require exporters to provide post-shipment certification that the goods have not been diverted to proscribed entities, with verification of the basis for such information.

As to pre-license checks and post-shipment inquiries, our practice and policy concerning South Africa is also generally applicable to other countries.

Our pre-license checks and post-shipment inquiries are initiated by the Office of Export Enforcement (OEE) via specific requests to our embassies and consulates. Generally, the personnel who make these checks are officers of the Commerce Department Foreign Commercial Service. They have a knowledge of business practices which is

useful in detecting diversions. In addition, from time to time, we send specialists from OEE to augment their efforts. These specialists are trained in export control work and have provided valuable assistance to our diplomatic posts. In all cases, pre-license and post-shipment check activities are undertaken by Commerce officers abroad who are subject to the guidance and direction of the chief of mission of the foreign post in question.

Generally, a pre-license check involves an on-site visit to the premises of the proposed end-user by a U.S. Government employee, who would have been provided with relevant background information and applicable instructions. During the visit, the person conducting the check learns as much as possible about the nature of the end-user's business and reputation to determine his suitability as a recipient of U.S.-origin products.

As for South Africa, since the beginning of this year, OEE has initiated 26 pre-license checks of proposed computer exports and we completed 17. The remaining checks are awaiting completion and licenses would not be issued until they are done.

Similarly, our post-shipment verification program also entails on-site visits by U.S. Government employees. Before making his post-shipment check visit, the employee conducting the check is provided with a description of the merchandise in question and

other pertinent background information and instruction. During the visit, he or she meets with the end-user or importer, checks the commodities, and examines records to determine the identity of the actual user.

Our post-shipment verification activity in South Africa increased significantly in response to Executive Order 12552 of September 9, 1985. It has increased further in response to the Comprehensive Anti-Apartheid Act. For example, in calendar year 1985 we completed eight post-shipment verifications in South Africa. In 1986, we completed 23. From January 1 through June 15 of this year, we have initiated 53 post-shipment verifications and completed 33. It is relevant to note that South Africa accounts for about one-third of the post-shipment verifications that we have initiated worldwide so far in 1987, and about 40% of those conducted worldwide this year.

These pre-license and post-shipment checks conducted in South Africa serve a purpose that extends beyond verification of the export transaction. They also provide opportunities for the United States to express its opposition to apartheid. Our experience thus far shows that the business community in South Africa has generally been cooperative and accommodating.

In addition to pre-license checks and post-shipment verifications, which are conducted around the world, we have two programs that are unique to South Africa: (1) the importer letter of end-use assurance, and (2) the exporter post-shipment certification.

First, since November 1985, when the Department published regulations implementing Executive Order 12532, all proposed consignees of computers in South Africa are required to certify that they (1) are not affiliated with an apartheid-enforcing entity, (2) will not divert to a proscribed entity, and (3) agree to cooperate with post-shipment inquiries by U.S. officials. This makes the consignee aware of the U.S. policy towards apartheid and that checks are likely to be made.

Secondly, our exporter post-shipment certification program requires that exporters of computers and their derivatives certify, on our request, that the goods have not been diverted to a proscribed entity. The end-user is also required to certify the basis of this knowledge. We use appropriate means, including investigations and post shipment verifications, to follow up on incomplete or inadequate answers. For the first six months of this year, we requested 34 such certifications. Last year, we initiated 30 such requests.

Effective enforcement necessarily involves the systematic application of intelligence. OEE continues to devote a significant

portion of its intelligence resource to South Africa. Since the beginning of this year, OEE devoted approximately 56 staff hours per week to South Africa. This represents about 17 percent of OEE's total analytical capability, which is an increase of 70 percent from last year's figure.

Further, we have requested the intelligence community and the Customs Service to pay special attention to intelligence on possible illegal exports, reexports or diversions of U.S.-origin computers and computer related goods and technology controlled under the CAAA. The intelligence community provides us with such information on an on-going basis, and the Customs Service has advised us that its officials and attaches abroad have been instructed on this tasking.

Intelligence is especially useful in OEE's preventive enforcement effort. Based on intelligence, individuals and entities suspected of possible diversion or other export activities in circumvention or violation of the CAAA are called to the special attention of licensing personnel of the Office of Export Licensing (OEL). The names of the questionable parties are then matched against pending export license applications so that we would not inadvertently issue licenses to proposed consignees who pose a known diversion risk. Where appropriate, OEE would also initiate pre-license or

post-shipment checks based on the information we receive from the intelligence sector and the business community.

I believe we are on solid grounds in applying our intelligence and investigative resources to Trade Administration's overall effort to implement the CAAA, and our measures are effective in enforcing the law.

Since 1985, OEL has not received any license applications for exports to South Africa of computer servicing or manufacturing equipment. In 1985, the Department approved 798 individual validated licenses (IVL's) for export of computers to South Africa, and in 1986, 1,141 IVL's for computer exports were approved. Since January of this year, 452 license applications were approved for computer exports.

Now, let me address the implementation of section 321 of the CAAA: the ban on exports of crude oil and "refined petroleum products." Because the statute did not define the term "refined petroleum products," nor did the legislative history provide any specific guidance, it was necessary for us to establish the actual list of products intended to be covered by the Congress. Senator Kennedy, when introducing the amendment that added this prohibition, stated that "(W)e are basically incorporating the remainder of the

Commonwealth sanctions which would prohibit . . . the exportation of petroleum products . . ." However, the United Kingdom and the European Economic Community restraints applying to oil exports to South Africa offered no guidance since they were not explicit as to what constitutes refined petroleum products.

Reference to controls on petroleum and petroleum products is found in the short supply controls of the Export Administration Regulations (EAR) and in four corresponding Commodity Control List (CCL) entries. These CCL entries correspond to a list of petroleum and petroleum products described in Supplement 2 to Part 377 of the EAR, pertaining to short supply controls. We used this as the basis to subject commodities to the ban on crude oil and "refined petroleum products." However, we omitted five commodities found in "Group Q" of the short supply commodity list because these commodities are not hydrocarbons, or inorganic chemicals, and therefore, we do not consider them to be "refined petroleum products." These commodities are helium, hydrogen, aqueous and anhydrous ammonia, and carbon dioxide and carbon monoxide.

When we drafted the regulations governing the prohibition on exports of "crude oil and refined petroleum products," we solicited the advice of industry and in-house technical staff as to the scope of interpretation of refined petroleum products. We were criticized by industry and certain in-house technical personnel who

advocated a broader exclusion of commodities found in the short supply commodity list from our definition of "crude oil and refined petroleum products." They asserted that butane, propane, and natural gas liquids contain gas liquids not derived from petroleum, and that commodities found in "Group Q" of the short supply list, such as naphthas, petroleum jelly, paraffin waxes, and lubricating oils are so refined and processed that they are questionable "petroleum products" in normal parlance.

The basis for including these substances in the definition reflected the recommendations of Export Administration technical staff and the practical consideration that the only refined petroleum products actually exported to South Africa are found in Group Q of Supplement 2 to Part 377. If all "Group Q" substances were excluded, the embargo on refined petroleum products would have no impact on trade with South Africa.

On the other hand, our decision to exclude petrochemicals was based on the fact that petrochemicals have historically been excluded for export control purposes from the definition of "refined petroleum products."

In conclusion, I want to again emphasize that we are committed to enforcing the law faithfully and diligently. We have taken specific measures calculated to produce the best results with the available resources, given other export control requirements mandated by Congress. I believe our effort reflects carefully planned and systemically executed measures to carry out the intent of the Congress.

Mr. WOLPE. Thank you, very much.

I'm delighted to be joined now by the Chair of the Subcommittee on International Economic Policy and Trade, Mr. Bonker.

Mr. BONKER. Mr. Chairman, I just want to ask unanimous consent to have my opening statement placed into the record.

Mr. WOLPE. That will be placed in the record at the beginning of the hearing, without objection.

[Prepared statement of Representative Bonker follows:]

## PREPARED STATEMENT OF HON. DON BONKER

The Subcommittee on International Economic Policy and Trade is pleased to join with the Africa Subcommittee in this joint hearing to review implementation of the 1986 Anti-Apartheid Act. It is appropriate that our Subcommittees meet today -- the 11th anniversary of the student riots in Soweto.

The Comprehensive Anti-Apartheid Act imposed a number of restrictions on United States trade with and investments in South Africa in order to demonstrate our abhorrence of the apartheid system and to encourage the Government of South Africa to move toward dismantling apartheid. These provisions include implementation of the Sullivan Code of Conduct for U.S. corporations in South Africa, import bans on krugerrands, military articles, products from parastatal organizations, uranium, coal, iron, steel, agricultural commodities and products, and sugar. Export restrictions cover computers, software and servicing to certain entities in South Africa, loans to the Government or any of its agencies, nuclear goods and technology, new investment, items on the Munitions List, and crude oil and refined petroleum products. Our purpose in meeting today is to determine where the Executive Branch is in implementing this wide-ranging act. In addition, we will also explore where we go from here -- particularly in light of the Rev. Leon Sullivan's decision to call on United States firms to withdraw entirely from South Africa.

I look forward to the testimony of our distinguished witnesses.

Purpose of joint oversight hearing is to examine status of Executive branch implementation of Comprehensive Anti-Apartheid Act of 1986 (PL 99-440). The Act became law 10/2/86, following House (313-83) and Senate (78-21) overrides of Presidential veto.

This memo covers where we stand on key provisions of the Act, beginning with U.S. policy goals toward South Africa and moving to the specific economic sanctions set out in Title III of the Act.

Sec. 101 sets forth six policy goals on ending apartheid, stating that the U.S. will "adjust its actions toward South Africa to reflect that Government's progress or lack thereof in meeting these goals." There has been little or no progress in meeting any of these objectives. The Government just renewed the state of emergency on June 11; the Government has not released Nelson Mandela or others; the Government has not allowed participation in the political process by all races, although the Government has been trying recently to get certain black leaders to participate in an advisory group on political reforms; the Government has not set a timetable to end apartheid laws; the Government continues to refuse to negotiate with representatives of all racial groups, specifically it will not talk to the ANC as long as it adheres to a policy of violence and terror; and because the Government refuses to comment on military and paramilitary attacks aimed at neighboring states, it is difficult to determine whether the Government has ended such attacks.

Sec. 101 sets forth four policy goals on ANC activities which are also to be considered in formulating U.S. policy towards S. Africa. Little progress has been made in these four areas. The ANC has yet to renounce violent activities to achieve its goals; the ANC has moved closer to accepting a free and democratic post-apartheid South Africa (in a 1/8/87 speech Tambo called on whites to join blacks to end apartheid and establish a new, non-racial society that would guarantee basic freedoms, and de-emphasized nationalization and a socialist redistribution of wealth program while stressing a growth-oriented economic plan); the ANC has agreed to enter negotiations with the Government, but on certain conditions; and although the ANC denies it is controlled or influenced by the communist party, some of its members are communist party members.

Sec. 207 denies U.S. export marketing aid to any company with more than 25 employees which is not "implementing" the Sullivan Code. The private, nonprofit Investor Responsibility Research Center has found 33 companies that should be denied such assistance. (These firms either are not Sullivan signatories, or received failing grades in last year's Sullivan Code audit.) I am checking on whether USDA/FAS or Commerce/FCS has provided any assistance to these firms.

Sec. 208 contains the Sullivan Principles (implementation is mandatory)). You may recall that Rev. Sullivan on June 3, 1987 abandoned the Code, urging the U.S. to break diplomatic relations and impose a complete economic embargo against S. Africa until apartheid is ended. He asked the 127 U.S. Sullivan adherents to withdraw from S. Africa within 9 months and urged Congress to impose "stringent penalties" on trading partners who move in to replace U.S. firms. He singled out Japan as "very active in South Africa." Most Sullivan adherents responded that they will continue operations there.

Title III of the Act contains a series of import and export restrictions on trade with S. Africa. These include import bans on krugerrands, military articles, products from parastatal organizations, uranium, coal, iron, steel, agricultural commodities and products, and sugar. Export restrictions cover computers, software and servicing to certain South African Government entities, loans to the Government and any of its agencies, nuclear goods and technology (unless S. Africa signs the NPT or accepts full-scope IAEA safeguards), new investment, items on the Munitions List, and crude oil and refined petroleum products. The Act also suspends nonemergency landing rights for South African aircraft; prohibits U.S. banks from holding South African Government or Government-controlled entity accounts (except for diplomatic purposes); terminates the reciprocal tax treaty; prohibits any U.S. Government funds from being used to promote tourism in S. Africa; and denies U.S. Government funds to finance any investment in or trade with S. Africa (including trade missions and fairs in S. Africa).

One controversial area you may wish to focus on is the ban on uranium imports. Although the authors' intent clearly was to ban imports of all S. African uranium, only uranium ore and oxide are specifically mentioned in the law. Uranium hexafluoride was excluded from the list simply because the authors did not realize there was another form of uranium that should have been listed. [Industry reps. with whom we met agree with us and Wolpe's letter that uranium hexafluoride imports should be banned.] Whether imports that will be reexported should be prohibited is another matter. Again, I believe the authors did not mean to allow re-exports, and probably did not think that such specificity was necessary. It is ironic that the industry argues in one case that the absence of a specific item cited in the law means imports of the item can nevertheless be banned, but in the other case absence of a specific prohibition on reexports means the authors did not intend to ban reexports. I will prepare questions for you for Treasury and DoE on this matter.

Mr. WOLPE. And now finally, as our final opening statement, we'd like to call upon Mr. Woods of the Defense Department.

**STATEMENT OF JAMES L. WOODS, DEPUTY ASSISTANT SECRETARY FOR AFRICAN AFFAIRS, U.S. DEPARTMENT OF DEFENSE**

Mr. Woods. Good afternoon, Mr. Chairman, thank you.

I'm Jim Woods, Deputy Assistant Secretary of Defense for African Affairs.

Since my prepared statement will be a part of the record, I will limit my remarks to several of the more substantive matters of interest.

In preparation for this hearing, the Chairmen of these subcommittees asked that I respond in writing to three questions. That reply on behalf of the Department of Defense has been submitted and I request that it also be made a part of the record.

To summarize, one, we are aware of the existence of SAFAIR, a South African air freight company with a fleet of some 16 L-100 aircraft. To our knowledge, SAFAIR is not affiliated with the South African Defense Force, although it does perform contract defense services for the South African Defense Force, as one of many customers.

Second, the Department of Defense knows nothing about alleged covert South African operations to assist the Nicaraguan Contras, with or without American involvement.

Third, in the course of normal duties, American military attaches in South Africa meet with Lt. Gen.—formerly Colonel—Van Der Westhuizen, who is the Secretary of the State Security Council. They also meet on occasion with representatives of the Chief of Staff, Intelligence, and other elements of the South African Defense Forces.

In Washington, people from my office and other Defense individuals on occasion meet with South African Attaches who are accredited here. All of these meetings are bound by the law and by our policy guidance.

No contact with South African defense officials has been reported in the context of assistance to the Contras nor do we in Defense have any knowledge of such contact.

Within Defense, we have had our own policy guidelines and restrictions on military relations with South Africa since 1978. Those policy guidelines, which are reviewed from time to time, correspond to Section 322 of the requirements of the Comprehensive Anti-Apartheid Act of 1986.

Please allow me to take just a moment to summarize the current situation with respect to our military relationship.

The United States has no military presence in South Africa other than our attaches and the Marine guards who are attached to our Embassy. By policy, the United States Navy does not call at South Africa's ports. It has not done so since February 1967. American military aircraft do not transit South African airfields except for occasional embassy support flights and occasional long-range weather reconnaissance missions.

The United States does not train or exercise with South Africa, nor does it permit members of the South African Defense Force to undergo DOD sponsored training or to attend DOD seminars.

We neither provide nor sell U.S. military hardware, technology, or items having potential military end use to the South African Defense Forces, the police or to any other governmental entity.

We do maintain a small Defense Attache Office in Pretoria; four officers are authorized. The South African Defense Force maintains a similar office here, three officers are authorized. Both of those offices are presently below the authorized strength.

The Department of Defense strongly believes that the presence of military attaches, even with the limited access they experience in South Africa at present, is extremely valuable. Our military attaches are reporters of politico-military intelligence.

Mr. WOLPE. Mr. Woods, I would draw your attention to the red light, if you could conclude your statement, I'd appreciate it.

Mr. WOODS. OK.

Defense would strongly object to curtailing the reporting activities of our defense attaches.

That concludes my statement.

Thank you.

[Prepared statement of Mr. Woods follows:]

PREPARED STATEMENT OF JAMES L. WOODS, DEPUTY ASSISTANT SECRETARY OF  
DEFENSE FOR AFRICAN AFFAIRS

GOOD MORNING. I AM JIM WOODS, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR AFRICAN AFFAIRS. MINE IS A RELATIVELY NEW POSITION, ESTABLISHED AS A PART-TIME FUNCTION IN JULY 1982, AND THEN AS A FULL-TIME RESPONSIBILITY LAST DECEMBER. ESTABLISHMENT OF THIS POSITION REFLECTS THE HIGHER PRIORITY AND INCREASED ATTENTION BEING GIVEN TO AFRICA BY THE DEPARTMENT OF DEFENSE. I UNDERSTAND THAT THE SUBCOMMITTEES ARE PARTICULARLY INTERESTED IN THE IMPLEMENTATION OF THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986 AND IN THE RESPONSIBILITIES OF THE DEPARTMENT OF DEFENSE IN IMPLEMENTATION OF SECTION 322 OF THAT ACT.

IN PREPARATION FOR THIS HEARING, THE CHAIRMEN OF THESE SUBCOMMITTEES ASKED THAT I RESPOND IN WRITING TO THREE QUESTIONS. MY REPLY, ON BEHALF OF THE DEPARTMENT OF DEFENSE, HAS BEEN SUBMITTED, AND I REQUEST THAT IT BE MADE A PART OF THE RECORD. TO SUMMARIZE THAT RESPONSE, (1) WE ARE CERTAINLY AWARE OF THE EXISTENCE OF SAFAIR, A SOUTH AFRICAN AIR FREIGHT COMPANY WITH A FLEET OF SOME 16 L-100s. TO OUR KNOWLEDGE, SAFAIR IS NOT AFFILIATED WITH THE SOUTH AFRICAN DEFENSE FORCE (SADF), ALTHOUGH IT DOES PERFORM CONTRACT DEFENSE SERVICES FOR SADF, AS ONE OF MANY CUSTOMERS. (2) WE KNOW NOTHING ABOUT ALLEGED COVERT SOUTH AFRICAN OPERATIONS TO ASSIST THE NICARAGUAN "CONTRAS" WITH OR

WITHOUT AMERICAN INVOLVEMENT. (3) IN THE COURSE OF THEIR NORMAL DUTIES, AMERICAN MILITARY ATTACHES IN SOUTH AFRICA MEET WITH LIEUTENANT GENERAL (FORMERLY COLONEL) VAN DER WESTHUIZEN, SECRETARY OF THE STATE SECURITY COUNCIL, AND WITH REPRESENTATIVES OF THE CHIEF OF STAFF, INTELLIGENCE, AND OTHER ELEMENTS OF THE SADF. AMERICAN ATTACHES AND OTHER DOD PERSONNEL AROUND THE WORLD OCCASIONALLY MEET WITH SOUTH AFRICAN ATTACHES AT SOCIAL GATHERINGS WHEREVER THEY ARE STATIONED. IN WASHINGTON, MY OFFICE AND OTHER DEFENSE INDIVIDUALS ON OCCASION MEET WITH SOUTH AFRICAN ATTACHES ACCREDITED HERE. ALL OF THESE MEETINGS ARE BOUND BY THE LAW AND OUR POLICY GUIDANCE. NO CONTACT WITH SADF OFFICIALS HAS BEEN REPORTED IN THE CONTEXT OF ASSISTANCE TO THE "CONTRAS," NOR DO WE HAVE ANY KNOWLEDGE OF SUCH CONTACT.

YOUR LETTER OF 28 MAY 1987 STATED THAT THE SECRETARY OF DEFENSE HAS "GOVERNMENT-WIDE RESPONSIBILITY" FOR IMPLEMENTING THE PROVISIONS OF SECTION 322 OF THE ACT. WE IN DEFENSE DO NOT VIEW OUR RESPONSIBILITIES IN THAT WAY. WHILE THE DEPARTMENT OF DEFENSE DID IN FACT ACCEPT RESPONSIBILITY AS THE LEAD AGENCY FOR SECTION 322, LIMITING COOPERATION WITH THE SOUTH AFRICAN DEFENSE FORCE, WE DID SO IN ANTICIPATION THAT ANY SUCH COOPERATION WOULD MOST LIKELY BE PROPOSED TO OCCUR BETWEEN THE MILITARY REPRESENTATIVES OF THE TWO COUNTRIES. WE DID NOT ACCEPT, NOR DID THE ADMINISTRATION INTEND WE ACCEPT, ANY OVERSIGHT RESPONSIBILITY OVER OTHER DEPARTMENTS OR AGENCIES OF THE GOVERNMENT. FURTHER, NEITHER WE NOR ANY OF THE OTHER DEPARTMENTS OR AGENCIES UNDERSTAND SECTION 322 OF THE ACT TO

IMPLY MANDATORY AND ALL-INCLUSIVE SUPERVISION BY THE DEPARTMENT OF DEFENSE OVER OTHER DEPARTMENTS. THIS VIEW HAS BEEN REVIEWED AND REAFFIRMED BY THE DEPARTMENT OF STATE AND BY THE NATIONAL SECURITY COUNCIL STAFF, IN PREPARATION FOR THIS HEARING.

WITHIN DEFENSE, WE HAVE HAD OUR OWN GUIDELINES AND RESTRICTIONS ON RELATIONS WITH SOUTH AFRICA SINCE 1978. THOSE POLICY GUIDELINES CORRESPOND TO SECTION 322 OF THE REQUIREMENTS OF THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986. PLEASE ALLOW ME TO SUMMARIZE THE CURRENT SITUATION:

THE U.S. HAS NO MILITARY PRESENCE IN SOUTH AFRICA OTHER THAN THE ATTACHES AND MARINE GUARDS ATTACHED TO OUR EMBASSY. BY POLICY, THE U.S. NAVY DOES NOT CALL AT SOUTH AFRICA'S PORTS AND HAS NOT DONE SO SINCE FEBRUARY 1967. AMERICAN MILITARY AIRCRAFT DO NOT TRANSIT SOUTH AFRICAN AIRFIELDS EXCEPT FOR OCCASIONAL EMBASSY SUPPORT FLIGHTS AND LONG-RANGE WEATHER RECONNAISSANCE MISSIONS. THE U.S. DOES NOT TRAIN OR EXERCISE WITH SOUTH AFRICANS NOR DOES IT PERMIT MEMBERS OF THE SOUTH AFRICAN DEFENSE FORCE TO UNDERGO DOD-SPONSORED TRAINING OR ATTEND DOD SEMINARS. WE NEITHER PROVIDE NOR SELL U.S. MILITARY HARDWARE, TECHNOLOGY OR ITEMS HAVING POTENTIAL MILITARY END USE TO THE SADF, THE POLICE, OR TO ANY GOVERNMENTAL ENTITY. WE DO MAINTAIN A SMALL DEFENSE ATTACHE OFFICE IN PRETORIA (FOUR OFFICERS AUTHORIZED), AND THE SADF MAINTAINS A SIMILAR OFFICE HERE (THREE OFFICERS AUTHORIZED).

THE DEPARTMENT OF DEFENSE STRONGLY BELIEVES THAT THE PRESENCE OF MILITARY ATTACHES, EVEN WITH THE LIMITED ACCESS THEY EXPERIENCE AT PRESENT, IS EXTREMELY VALUABLE. OUR MILITARY

ATTACHES ARE REPORTERS OF POLITICO-MILITARY INTELLIGENCE, AND THEIR REPORTING COMPLEMENTS THE EFFORTS OF EMBASSY POLITICAL OFFICERS. IT STRIKES US AS CONTRADICTORY TO REDUCE OUR ALREADY LIMITED INFORMATION SOURCES IN SOUTH AFRICA AT A TIME WHEN OUR NATIONAL INTERESTS REQUIRE MORE INFORMATION. MOREOVER, OUR ATTACHES CAN PROVIDE A CHANNEL OF COMMUNICATION WITH A MILITARY THAT PLAYS AN IMPORTANT ROLE IN THE AFFAIRS OF SOUTH AFRICA. DEFENSE WOULD STRONGLY OBJECT TO ANY ATTEMPT TO FURTHER CURTAIL OUR ATTACHES' PRESENCE AND ACTIVITIES IN SOUTH AFRICA. WE ALSO FIND IT UNFORTUNATE THAT SOME SHOULD CONSTRUE THE PRESENCE OF A DAO IN A COUNTRY AS CONSTITUTING OFFICIAL APPROVAL FOR ITS POLICIES OR THE ACTIONS OF ITS MILITARY. SHOULD THAT LOGIC BE PURSUED, WE WOULD HAVE TO CLOSE DOWN ALL OUR DAOS BEHIND THE IRON CURTAIN, AMONG OTHERS.

THIS CONCLUDES MY STATEMENT. I WILL BE GLAD TO ANSWER YOUR QUESTIONS, ALTHOUGH I WOULD REFER YOU TO THE INTELLIGENCE COMMUNITY FOR ANY MATTERS FALLING WITHIN ITS PURVIEW.

Mr. WOLPE. Thank you very much.

I'm going to try to get my questions in under my five minutes before leaving for the vote, and then we will recess at that point, unless Mr. Bonker has returned.

My questions will be directed to you, Mr. Woods, as Deputy Assistant Secretary.

We want to first clarify precisely who is responsible for implementing Section 322 of the Comprehensive Anti-Apartheid Act of 1986. Section 322 is a broad and encompassing band, as you know.

It stipulates that, "no agency or entity of the United States may engage in any form of cooperation, direct or indirect, with the armed forces of the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. Further, the present Executive Order 12571 explicitly directs that the Secretary of Defense shall be responsible for implementing Section 322 of the Act."

Since Section 322 covers any agency or entity, it seems logical to expect that when President Reagan issued his Executive Order, he intended for the Department of Defense to monitor compliance with Section 322, not simply in terms of DOD's activities, but of those of other agencies as well.

Now, recently, there've been some reports that South Africa has in fact provided assistance to the Contras. On ABC on February 22, and in the Wall Street Journal of April 29, and in the San Francisco Examiner on several dates, there have been reports confirmed by intelligence sources that first, 83-84, the CIA arranged for Safair, a South African cargo carrier, with deep links to the South African Government, to provide L-100 cargo planes for use in the Contra resupply effort.

Second, that later in 1986, the CIA arranged for South Africa pilots and cargo handlers to assist the Contra's resupply effort.

Third, that there've also been reports of visits by South African intelligence officers to Central America at the behest of the CIA.

All of these activities are disturbing. All involve forms of military cooperation, and all could quite possibly have occurred after October 2, 1986.

Now, I guess I would like to ask, judging from your written responses, Mr. Woods, that the Department of Defense is now refusing to accept full responsibility for the implementation of Section 322.

In response to our questions regarding Safair and South African pilots and cargo handlers, you simply deny any DOD participation. At one point in your testimony just a few moments ago, you referred that, we in Defense don't know of such activities, avoiding altogether the far more important question of whether other agencies or entities have been engaged in these activities in defiance of the Anti-Apartheid Act.

On the subject of South African intelligence, you dwell solely upon routine or casual contacts, neglecting completely the question we posed to you in our written queries, whether South African intelligence officers at the CIA or at other agencies' behest, have been or still are assisting the Contras.

DOD's position, I understand, is that DOD's oversight responsibilities cover only DOD's activities and that this position has been re-

viewed and affirmed by the Department of State and by the National Security Council.

I'd like to know, first of all, if that's an accurate rendering of what the position is that DOD is taking, and if not, you can correct whatever misstatements I may have made in that characterization.

But if it is correct, I'd like to know exactly how DOD arrived at this position?

Mr. Woods. That's a correct characterization of our position.

I think this hearing and the letter that you sent to us are useful to cause us to reexamine. We did agree to be the lead agency. We anticipated that if there were to be proposals for any form of defense cooperation or for limiting any form of on-going defense cooperation, that we would probably be the principal office of contact.

We did not, at that time, think that we were taking on the job of supervising the CIA or any other agency outside of Defense. When we received your letter with the questions from the chairmen of both subcommittees, we did go back through the Defense loop, including our general counsel.

We did go to State, we did go to the NSC staff, and confirmed the position that I've taken in my response to you—that, yes, we think we would be in the lead, but only within Defense.

We did circulate your questions and I did respond specifically, at least for Defense, to the question of the Contra connection in my letter and in my statement here this afternoon.

As far as Defense is concerned—and we did, as I say, circulate your questions formally throughout the Defense community over Mr. Taft's signature—we are not aware of any contact with South African Defense Officials in the context of assistance to the Contras whatsoever. But you're correct, I am speaking, when I say that, only for elements of the Department of Defense.

Mr. WOLPE. Well, how did DOD arrive at a position that appears on the face of it, at least, to be in conflict with the President's own Executive Order?

Mr. Woods. Well, Mr. Crocker mentioned there is an interagency group which meets from time to time, indeed to discuss, originally, the development of the Executive Order and how it was to be implemented, and rightly or wrongly, that's the understanding we got out of how that would proceed.

And that—

Mr. WOLPE. Who was involved in that discussion?

Mr. Woods. You mean, as representatives from DOD?

Mr. WOLPE. I'm trying to get some understanding of how this decision got made.

Who was involved in the discussion that led to the decision that the Department of Defense will assume no responsibility, notwithstanding the Executive Order, for any activities outside of the Department of Defense?

Mr. Woods. Well, it's an interagency group, and my own office is representative from Defense, as was our general counsel. And I guess I could ask Mr. Crocker if—

Mr. WOLPE. Could you indicate who else was involved?

Mr. Woods [continuing]. Who has the lead, you know, in enforcing responsibility over non-defense agencies.

Mr. CROCKER. Mr. Chairman, there is an interagency group, as we have indicated, that is comprised of the organizations and agencies of the departments represented here, and several others who are not represented here.

It is Chaired by State and these discussions are held periodically whenever there are issues to be discussed or to be thrashed out concerning the implementation.

Mr. WOLPE. Well, I wonder if you could, for the written record, identify or spell out the decisionmaking process that was involved in what in my judgment is a circumvention of the Executive Order.

I mean, if the Department of Defense is held responsible in the Order for implementing the Executive Order, and if in fact, the Executive Order related to the anti-Apartheid Act, and we spelled out in that Act, a very comprehensive ban on activities, at this point, there's essentially no one that is fully responsible for the implementation of that provision.

Is that not correct?

Either Mr. Crocker, and Mr. Woods, both, perhaps.

Mr. CROCKER. Mr. Chairman, I think there may be a misunderstanding on this. There is as far as I'm aware no such cooperation. There are interagency discussions that occur on a routine basis.

Mr. WOLPE. There's no? I didn't hear you, Mr. Crocker?

Mr. CROCKER. There is, as far as I'm aware, no South African-U.S. Defense cooperation, as Mr. Woods' testimony indicates.

Secondly, there is routine coordination and exchange between agencies on a regular basis, and I think all agencies are fully aware of the law. And as Mr. Woods' testimony indicates, not only the law but longstanding policy and practice going back to 1978 on these matters.

Mr. WOODS. Our view, as I say, is not a position I developed personally and in isolation, but in discussion with the general counsel and of course I went to my own superiors, and they said, yes, that's correct. We're in the lead. We'll speak for Defense, but we don't have authoritative and directive powers, and we're not going to be the policeman for the other agencies.

However, all of those other agencies also are in receipt of the Act, and the Executive Order which holds them to faithfully execute it. So, at the moment, I, in fact, do not have the responsibility the Committee assumed I do have.

Mr. WOLPE. Then I take it though that you're not in a position to authoritatively deny the validity of the allegations that I discussed a moment ago?

Mr. WOODS. Not if it might involve any entity outside of the Department of Defense, sir.

Mr. WOLPE. Okay, thank you.

I will yield the chair at this point to Mr. Bonker.

Mr. BONKER. Gentlemen, Section 402 of the Act authorizes the President to limit imports from countries that, in effect, take advantage of the sanction policies of our government i.e., that benefit from, or otherwise take commercial advantage of, any sanction or prohibition as imposed under this Act. The intent here, clearly, is to make sure that the Japanese, the French and others don't take advantage of our efforts to deal with the moral and political issues in South Africa.

As I understand it, the law provides that USTR be chiefly responsible for tracking these activities, but I wonder if either Commerce or Treasury has anything to say with respect to Section 402 of the Act?

Mr. FREEDENBERG. We have the letter sent by the Trade Representative's Office.

Essentially, at this point, the information is sketchy. We hear anecdotal stories about other countries taking advantage of the fact that the United States is disinvesting or leaving. But we do not have comprehensive information, and we only have, as I say, specific comments made by companies in South Africa.

So I think it's a little early to have the kind of information that you would need to make a judgment of the sort that's called for in the Act.

Mr. BONKER. Thank you, Mr. Freedenberg.

The other question I have relates to the section of the Act that allows the Executive some discretion with respect to the importation of uranium ore and oxide.

Treasury has been sent a letter, drafted by the Chairman of the Africa Subcommittee and signed by a number of members of the Foreign Affairs Committee, which indicates that Congress did not intend to allow the importation of uranium for purposes of reexport or for enrichment.

The reexport exemption is being reviewed by Treasury, as I understand it, and a decision is due by July 1, 1987. I would like to pose a question to the Treasury witness. Is there any hope of a preview announcement to the Committee this afternoon, with respect to this issue?

Mr. NEWCOMB. Mr. Chairman, we certainly are mindful of this Committee's view on this regulation. We're in the process of reviewing the comments we've received. We've received several hundred comments.

We're going through them. We do not have a decision on this issue today, but as I indicated in my prepared testimony, we anticipate and fully expect to have a decision prior to the July 1 date that we spelled out in our regulation.

Mr. BONKER. Well, let's pursue the issue for a moment, because I'm not sure Congressional intent is clear with respect to the importation of uranium for purposes of reprocessing or reexport.

As I understand it, certain Asian countries are buying uranium from South Africa, bringing it to the United States for enrichment, and then shipping it home.

Is that true?

Mr. NEWCOMB. That is certainly among scenarios that could happen.

Mr. BONKER. That's not happening?

Mr. NEWCOMB. Well, since the date of the Act and during this entire time period, there have been no shipments into the United States for processing and reexport.

Mr. BONKER. Prior to enactment?

Mr. NEWCOMB. That, my understanding, is one scenario, yes.

Mr. BONKER. I don't want to dwell on scenarios. Prior to enactment is it not true that certain Asian countries—

Mr. NEWCOMB. Yes.

Mr. BONKER [continuing]. Purchased uranium from South Africa and brought it to—

Mr. NEWCOMB. Yes, Mr. Chairman.

Mr. BONKER [continuing]. The United States for enrichment?

I guess the question is, if the Treasury rules, as this Committee majority wishes it will, to prohibit the importation of uranium for that purpose, the Asian countries most probably will continue to purchase that uranium and have it enriched elsewhere.

Is that a possibility?

Mr. NEWCOMB. Yes.

Mr. BONKER. Where?

Mr. NEWCOMB. I'm sorry, I don't know.

Mr. BONKER. Do you have a scenario?

Mr. NEWCOMB. No, sir.

Mr. BONKER. Well, who else is properly equipped to reprocess?

Mr. NEWCOMB. I frankly—

Mr. BONKER. Supposedly, the Treasury is looking closely at this matter and is going to report back to the Congress on July 1. Somebody down there ought to know the answer to these questions.

Mr. NEWCOMB. We do have a gentleman from the Department of Energy whose here that is responsible for the importation and processing who perhaps might be able to more fully answer that question for you, if you'd care to, or we could get an answer for you and submit it for the record.

Mr. BONKER. OK, fair enough.

I understand that other witnesses may be better prepared to address that question.

Is Mr. Kermit Lawn or Philip Farewell, both of whom are from the Department of Energy, here?

I wonder if you could approach the witness stand, and respond to the question I have asked the witness from the Treasury Department. It's of vital importance to the Committee, and I think it would be good to have the Administration's comments on record.

Would you identify yourself for the reporter?

Mr. LAWN. Yes. Mr. Chairman, my name is Kermit Lawn.

I'm presently the Associate Deputy Assistant Secretary for Uranium Enrichment within the Department of Energy.

The function of our organization is purely and simply to operate the two gaseous diffusion plants in Portsmouth, Ohio and Paduka, Kentucky, for the purpose of enriching uranium, both for commercial customers and defense purposes within our country.

Roughly 60 percent of our business, commercial business is for domestic nuclear power reactors; some 40 percent is for foreign customers. At one point in time, up to the end of the previous decade, we were a world monopoly in supplying these services.

To answer your specific question, at this point in time, there are other suppliers of enrichment, which include two consortiums in Europe and the Soviet Union. As of today, the U.S. holds approximately fifty percent of the world market share in nuclear power enrichment.

Mr. BONKER. So there are alternative sources for reprocessing?

Mr. LAWN. Yes, sir. And in fact, very competitive. Two of them, in fact, have established offices in Washington, D.C., and are very active in working with U.S. utilities.

Mr. BONKER. So, if the Treasury Secretary were to prohibit the importation of uranium for enrichment purposes, then the Asian countries could find alternative sources?

Mr. LAWN. Yes, sir.

If I might, I do not have prepared remarks but it seems to us, as the people who simply operate the enterprise and who are not dealing so much in the policy of this, we will of course abide by the laws and the regulations, but we have two concerns:

One, what impact does an embargo on South African uranium have on domestic U.S. utilities, and we believe that the whole issue has been recognized and the problem recognized to the extent that it will have essentially no impact, although it would decrease some sales from South Africa, and therefore some impact.

Our major concern, again, has been the foreign business, and specifically Japan, Taiwan, Spain, and Germany. These countries do buy uranium from South Africa, and other countries, and as you indicate, send it here for enriching, reexport it, make fuel for nuclear reactors and use it.

Our concern in this area is they do have the alternative enrichers. They could well choose and would choose to find other enrichment services if we could not bring the material into the country. It would cost the United States between \$200 and \$300 million per year in balance-of-trade payments.

It could jeopardize the operation of the Paduka gaseous diffusion plant which is currently operating at rather low capacity already, and which employs over 12,000 workers. And again, those are——

Mr. BONKER. Before you go further, let me pose a related question.

If the Asian countries who rely on uranium from South Africa and on American enrichment were no longer able to continue their supply through the existing means, is it not possible they could purchase the uranium from other countries and then bring it into the United States for enrichment and shipment to the countries involved?

Mr. LAWN. Yes, sir. In fact, specifically countries as Canada and Australia are very large suppliers of uranium in the world market today.

Mr. BONKER. Are they price competitive?

Mr. LAWN. They are price competitive. The problem again, however, though, is that many of these uranium supply contracts are long-term in nature. So that, yes, those our friends who chose to stay and do business with us, we might well seem them shift to other sources.

Mr. BONKER. Does the executive branch have any indication as to which way Taiwan or other purchasing countries might go? Might they prefer the present enrichment facilities in the United States and simply secure the uranium elsewhere, which would really help to achieve the intent of the Act?

Or is it your guess that they'll just find another place for enrichment?

Mr. LAWN. I'll have to say at this time we have no indication. My guess would be that they will ultimately do what is most economic for them.

Mr. BONKER. Thank you.

Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman.

I would like to address my questions to Mr. Crocker.

And I would like to ask him a question about the problems in South Africa regarding the sanctions and their impact.

But first, I would like to ask a question on another subject.

There are approximately 35,000 to 45,000 Cuban troops in Angola. Approximately 10,000 Cubans have been killed, according to a Cuban officer who recently defected, and Radio Marti is commissioned to gather all the information that they possibly can relative to the Cuban people and to broadcast that information which may be of concern to them and their government.

The fellow who is the Director there at Radio Marti is a man named Jay Malan and he was going to Angola to report on these problems over there, the number of Cuban troops being killed and so forth, to the Cuban people. And he was denied a visa by the State Department or denied access to Angola by the State Department, and he subsequently took another trip, and did get into Angola.

And when the State Department found out about it, they prohibited him from going to Mozambique. He was making a subsequent trip to Mozambique while he was over there to find out about the Cuban involvement in Mozambique. We understand that 1,000 Cubans are in Mozambique at the present time, and Castro has offered to send more.

Two Cuban doctors were killed in the plane crash in which Machel, the former president over there, was killed, and recently a Cuban lieutenant was killed by Ranamo, the freedom fighters in Mozambique, while he was fighting with the Mozambique Army, the Frelimo forces.

And my question is, first, why did the State Department prohibit the head of Radio Marti from going to Angola to get this information, and second, why, when he finally did get there, did they stop a subsequent trip to Mozambique, and is that the policy of the State Department?

Mr. CROCKER. Mr. Burton, in the interests of facts, we have not in the State Department sought to inhibit the operation of Radio Marti insofar as coverage of the situation in Angola is concerned.

Radio Marti works very closely, as you know, with USIA, and such details as who approves the travel of individual correspondents or reporters for Radio Marti is not the business of the State Department. It's the business of USIA and the Voice.

Mr. BURTON. Well, as I understand it, there's a classified cable which I won't go into right now in detail, but Radio Marti has a copy of it which specifically comes from State Department which prohibited them from going to Angola in the first place, and the subsequent trip I referred to also was prohibited by the State Department.

Mr. CROCKER. Well, you indicated that the second of these two trips went forward, and it did go forward?

Mr. BURTON. It went forward to Angola, but when he was going on from Angola to Mozambique, State Department got wind of it and stopped it.

Mr. CROCKER. I believe the materials you're referring to, the cables of the instructions are in fact of the U.S. Information Agency, Mr. Burton.

Mr. BURTON. Well, if I am incorrect, then we'll take it up with the U.S. Information Agency, but we'll have a copy of it before long, and I'll be back in touch with your office on that.

Mr. CROCKER. All right.

Mr. BURTON. Now, the other thing I'd like to ask you about is something we're all concerned about, and that is the adverse impact that the sanctions legislation we passed last year is having on South Africa.

Now, you heard my opening remarks, and I'd like for you and Mr. Keyes, if possible, to respond to the statement I made, and let me know what your position is at State, and at the General Assembly.

Mr. CROCKER. Well, Mr. Burton, I would associate myself with virtually everything in your statement in terms of impact to date, our influence with the South African government—here I'm talking about political effects, our influence with the South African Government clearly has been undercut.

Many of our demands and demarches on human rights issues and political issues in terms of for example of starting negotiation have been ignored.

We find a South African Government attitude which is frequently belligerent toward us. And precisely as Secretary Shultz predicted last July, there has been a tendency for people to look at us and to be distracted from their own problems there. They need to get on with it there, and not to look at us and to campaign against us as we saw in the recent election.

If you look at the facts on the ground, South Africa has toughened the State of Emergency. It has put in place new press restrictions. It has expelled journalists. It has threatened black institutions receiving external funding. It has conducted a series of raids on its neighbors. There has been no movement forward on the issue of releasing Nelson Mandela, ending violence, and so forth. The things that were called for in the Act.

An election has been held. It was fought largely on a platform of tighter security, crackdowns, and negotiations only in the very narrow context of what they call the National Statutory Council, a body that has been rejected by virtually everyone.

The voters seemed to have expressed themselves. They have created a new opposition party which is on the far right. Those parties which had come closest to identifying themselves with the goals of the Act were literally smashed in this election.

We see no movement on the elimination of Statutory Apartheid. I think the view of the Government is that it is relieved of external pressures and constraints, freer than it was before.

There were some, and now I talk about the impact in terms of black attitudes, Mr. Burton. There were some initial reactions. We heard from some African leaders and some black leaders inside South Africa, appreciating a gesture or a symbol. More recently, what we're seeing is a much clearer sense of rethinking.

As you indicate in your own opening comments, Mr. Burton, people are saying that, well, we really didn't want you to leave. We

didn't mean this. You and your firms are solving your own political problems in the United States. You're not solving our problem down here by doing these things.

So we've seen the disinvestment movement further encouraged in a sense by the Act. It's ironic, because the Act didn't call for that. The Act said that our firms are doing a proud job and should stay. In any event, it said that there should be no new investment, and the firms have taken a lesson from that, and so we're seeing more and more disinvestment.

I think the results of this bill are pretty clear so far. It is only eight months since the bill was passed. I would urge people to recognize that we are a marginal actor in any event. We don't have the ability to give orders down there.

But let's focus on the real issue. The real issue is how to get negotiations started, how to end the violence in South Africa. How to have blacks in a position such as they can bargain and shape their own future, and negotiate a democracy which I think is what all of us in this room would like to see.

The issue of sanctions, in effect, has been a diversion from the real issue. What we're trying to do is to push our positive agenda, and you appealed to us at the end of your opening, Mr. Burton, to shape that agenda.

We are seeking to get negotiations started. We are seeking to float our ideas, to keep channels open, to communicate ourselves with all parties. We're looking to see if there can be formulas developed that would lead to an end to violence and an opening of negotiations. We're trying, in the meantime, to help blacks themselves build institutions for change, and to build their own capacity to negotiate.

We are builders, not destroyers, is our essential message. In sum, Mr. Burton, we don't believe that apartheid will go away because we do. We recognize that our influence is limited. We want to use it, and not remove it.

So that's the way we approach this question.,

We could also discuss the economic impact of this bill. There have been some things said previously quoting the report to Cosatu. We share the conclusion that if more countries followed the kind of measures that have been put in place by us, that if we were to go beyond our present measures, it could lead to a truly hideous economic scenario which has nothing to do with democracy, nothing to do with negotiations, but rather to the further impoverishment of a country which needs growth and not impoverishment.

A situation in which millions of blacks who presently have work and many of course don't, the employment rate is hideous there already, could be unemployed, that the black share of the national income of South Africa could drop very dramatically, and that simply is not a scenario in our view in which you're going to see either negotiation or the chance for the black majority to assert itself and to help shape its own future as a democratic country in South Africa.

Mr. BURTON. I've just been informed my time's up. But thank you very much.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Burton.  
Congressman Crockett.

Mr. CROCKETT. Thank you, Mr. Chairman. Pardon me.

Mr. Crocker, in the closing paragraph of your statement, you referred to last year's debate on sanctions, and you characterized them as emotional and bruising, which of course is true. You finally conceded that Congress had its way which was not the same as what the State Department wanted.

Then, in another portion of your statement, you said and I quote, "the exceptions of the report called for in Section 501(b) and the program called for in section 504(b), all of these provisions have been complied with."

You were referring to those provisions in the Act that related specifically to the State Department.

I gather that you're drawing a distinction between a finding of Congressional policy and a direct mandate to the State Department. So what you're saying is that insofar as Congress gave mandates to the State Department, you've done that. But insofar as Congress clearly indicated a Congressional policy, the State Department really didn't give a damn whether they did that or not?

I think that's what it amounts to.

To me, this smacks of what is coming out of the Iran Contra hearings now. Congress may want one thing, but if it does not accord with what the State Department wants, then you don't do it.

For example, Congress said, as a matter of policy, conclude specific international cooperative agreements with other industrialized democracies that would include official economic sanctions.

Congress said, promptly begin negotiations with these democracies to reach such cooperative agreements within 180 days of the enactment of this Act. Congress also said, conduct an international conference to reach cooperative agreements among the democracies to impose sanctions against South Africa.

Now, that's very very clear language. The democracies—not waiting for the State Department to urge them to do so in the United Nations—wanted to impose sanctions. What do we do? We veto it.

Then, you select Mr. Keyes to do the dirty work, to come in here and explain. To use his language, the State Department thought it could be "contraproductive" to do what Congress had indicated should be the policy, and therefore, you substituted your own policy.

Do either of you gentlemen wish to comment?

Mr. CROCKER. Well, I think given the way you've phrased the latter part of your intervention, Mr. Crockett, that maybe Mr. Keyes would want to answer part of that, himself.

But I would simply make the point that we have been working very closely with our industrial allies, the key democracies that you referred to, to do those things which we think the Congress would like to see happen in South Africa, which is, let's forget for a moment, if we can, sanctions and disinvestment, which is largely an American preoccupation, and focus on the situation on the ground in South Africa which is, how do we get negotiations started, how do we get violence ended, how do we get people to recog-

nize across the spectrum, what the West stands for. How do we explore every conceivable window of opening for those negotiations. That's what we've been working with our allies on.

You mentioned, Mr. Crockett, that our democratic allies were taking a different view. On the contrary, if I may, we've submitted a report to the Congress which details what other countries have done, including all the democracies. It is very clear that the major players amongst those democracies do not agree with the judgment reached by Congress last year about the utility of punitive import bans, and they've not put them into place.

In fact, in several recent occasions where we have been at the United Nations, we have been there with the company of the two most important other western actors; namely Britain and West Germany. So I think it's very clear that there is a solid consensus on these things.

The Congress did suggest that there be discussions about broadening the sanctions packages and so forth. We have made it very clear in our view that we are not going to ask other sovereign countries to adopt measures about which we ourselves at the time of the debate last year had serious reservations and still have reservations—

Mr. CROCKETT. May I interrupt? When you say, "we, ourselves" you're referring to the State Department, you're not referring to the Congress, is that right?

Mr. CROCKER. I'm referring to the Administration, Mr. Crockett.

Mr. CROCKETT. Well, the Administration, which is the same as the State Department, isn't it?

Mr. CROCKER. Well, I would like to think so, yes.

Mr. CROCKETT. All right.

Mr. CROCKER. I don't know if Mr. Keyes would like to add a point on the U.N. context, because you did raise that issue.

Mr. CROCKETT. I think you gentlemen are entitled to one compliment. At least you didn't pull an Elliott Abrams and come in and lie about the situation. You come in and frankly admit, we don't give a damn what Congress thinks we should do. We are the Administration. We do what we want to do.

Thank you, Mr. Chairman.

Mr. KEYES. Excuse me. Mr. Chairman, if I might address myself to that issue?

Mr. WOLPE. Proceed.

Mr. KEYES. Two points I think I would make. I am obviously here pursuant to my capacity as Assistant Secretary for International Organizations. I have oversight responsibilities within the State Department working under the Secretary's direction for our policy toward the United Nations and that of course includes our participation in the Security Council.

So that I think that invidious remarks about the reasons that I'm here are, to say the least, inappropriate. But I also think that it's important to recognize that the stand that we take toward action in the United Nations has to be shaped both by our view of the particular issue in question, which I think myself and Assistant Secretary Crocker have made clear, and also by our understanding of the consequences of taking action in the U.N. context.

That is our responsibility. And the consequences of taking action in the U.N. context on this issue, as recommended by the Congress, and I think that's distinct from law, would be damaging to the interests of the United States and damaging to our ability to conduct our foreign policy effectively, and it is of course the prerogative and the responsibility of the President to make sure that that policy is conducted effectively under the Constitution.

So I think that we have simply been, as I am here today, so we in the Administration have been fulfilling our responsibilities to the best interests of this country.

Thank you, Mr. Chairman.

Mr. CROCKETT. Mr. Keyes, I suggest that you are here today for two reasons.

One, we've been raising Hell about the employment practices in the State Department and their failure to employ more blacks in Foreign Service and to promote more blacks. So they want to trot out the one black in the State Department who has an Assistant Secretary status.

That's one reason why you're here.

You're here secondly because you are to advance a State Department policy that is hated by the overwhelming majority of black people in this country who support the idea of sanctions in South Africa. It was more effective to have a black come in and say, if you impose sanctions, you're going to hurt blacks in South Africa, than it would be to have a white representative of the State Department come in and say that.

Thank you, Mr. Chairman.

Mr. ROTH. Well, Mr. Keyes, I think it's only appropriate we apologize for our colleague. I don't think that's the way we want to speak to any American or any witness that comes before our Committee.

We're not interested here in being vindictive. We just want to get at the facts, and we appreciate your candor. I think you're much too intelligent a man to do anybody's dirty work.

I've been following your career, and you're the type of man I admire because you have the courage to speak up. There aren't too many people in our government that can do that. And so my hat's off to you and I compliment you for the work you are doing.

One question I have for anyone on the panel—Mr. Keyes or anyone else: What steps can we take now, given the position we're in, to promote democracy in South Africa? How can we recapture some leverage in that country again?

Mr. CROCKER. Well, Mr. Roth, you've posed the question that we have been giving a lot of thought to in the months since the sanctions bill was passed. And as I say, we have reached the conclusion, a) that we will faithfully implement the law, that's the President's directive and it was said on the very day that his veto was overridden.

Two, that we are going to recognize the reality, which that this debate here has as much to do about America as it does about South Africa, and to get on with the business of diplomacy in South Africa and trying to get our goals achieved down there.

There is I realize a great desire among many people here to be sending signals and to taking stands and indicating gestures. The

fact of the matter is, that is only the very beginning of a domestic political act. The question is what has which results down there.

The signals that we have sent have made it harder for us to do business in a number of areas, as I indicated in response to a number of questions. But we haven't given up. We are determined to try and shape—and it's going to take some time—both the channels of communication and the ideas which will lead to a break through such that black and white are shaping their own future, building their own democracy in South Africa.

We think it's time for us to be speaking out more and more clearly about what this country stands for. And when Mr. Crockett said that we were not carrying out the intention of the bill in terms of our broad policy goals, I would take issue with him. There are many goals in last year's Act that are laid out that all Americans agree about.

And I'm glad they're there laid out as a bipartisan thing. Not the measures taken, not the sanctions, because we had some problem with them, but the goal. We do want to see a democratic South Africa. It's very important that everybody recognize that.

So we have been aggressively pursuing our contact work, Mr. Roth, across the political spectrum, as you know, seeing people from high levels in the South African Government, from opposition movements, from the labor union movement and so forth. We have been meeting inside the country and outside the country with people to try and stimulate ideas.

The fact of the matter is, that in a sense, both the black opposition and the Government of South Africa are groping as we see it right now. We can be helpful in that regard. We find more and more black leaders are rethinking their strategies at this current period, just like many Americans are.

And we confess, there are no easy answers. We sense that blacks are trying to build and expand their own ability to shape events. We support that. Blacks are trying to devise their own strategies that they control, not having a bunch of distant Americans who would presume to make their decisions for them.

They're seeking to build influence; they're seeking to build institutions. They're not looking to us to pull down our flag, remove our trade, remove our investment, if that means that their own options and their own strategies are limited, further limited.

By the same token in many respects I think the White Government of South Africa has painted itself into a corner, and as time passes will be looking for ways out of the corner it created for itself. Let us be very clear: there has been an increase in repression, there has been no pursuit of even a limited reform program that the government had underway previously.

They have now had their election, they have now had their measures of control, the state of emergency. It's time for them to sober up too. So that's the way we see it.

We think it's a time for Americans to think seriously but also of course above all for South Africans to think seriously.

Mr. KEYES. Mr. Chairman, if I might, briefly also respond to the question raised by Mr. Roth.

I think one thing that I would myself personally stress in the statement that Assistant Secretary Crocker has made, is the neces-

sity on our part to pay careful attention to what black people themselves in South Africa do and can do on their own behalf.

One of the problems is that concentrating on a desire to express our own anger and indignation, we fail to perceive objectively speaking the effective tools that black South Africans have forged themselves, failed to take account of the consequences which our actions are going to have on their ability to sustain those tools.

The opposite approach is the one we should be following. The unfortunate thing about this situation is that bad policy drives out good, and that instead of concentrating on the essentials, which are the support of black people in South Africa, the development and strengthening of the black power base in South Africa, we instead are concentrating on non-essentials.

And of course, if you look at the structure of that black power base, particularly focusing on the labor unions, other organizations, there are concrete ways in which we could effectively support the growth of the labor units, strengthening of those organizational ties, their ability to conduct their activities effectively with our support.

We could also be concentrating on areas that would increase the ability of blacks in South Africa to participate in the economy, including such steps as expanded capital ownership, ownership by blacks of stocks in the major corporations in South Africa, so that they would be benefitting, their power base would be benefitting from the fruits of their labor.

So there are positive steps which we can take to second and support what blacks themselves are doing in South Africa, rather than trying to substitute our actions and our judgment for their actions, their judgment, and eventually their success.

Thank you, Mr. Chairman.

Mr. ROTH. Just one short follow-up question.

When American companies leave South Africa, who generally buys the companies? Are the whites buying them? Are we providing assistance for blacks to buy them? Are we doing anything to promote any particular group or another?

Mr. CROCKER. Well, overwhelmingly, and I think this is a question the Treasury may want to address, as well, that overwhelmingly the buyer is a white firm in South Africa. And those firms that have left, our firms that have left South Africa have been looking for a buyer that would be available. They don't always necessarily have the choice as to who that would be.

We don't know of a single case where the successor organization has maintained the full range of programs in terms of support for black advancement inside and outside the work place that were previously in place.

Clearly, if more work is done along the lines of what the Ford Motor Company has recently announced, this could have some interesting potential along the lines of what Mr. Keyes just said.

Mr. WOLPE. Mr. Clarke, I wonder if you might yield, it's your time, but I wonder if you just might yield for a moment?

Mr. CLARKE. I yield.

Mr. WOLPE. I thank the gentleman for yielding.

I want to get the record clear here. There is not a single organization or a single individual, I am speaking of South African lead-

ers, that has supported disinvestment in the past or sanctions that has altered or reversed their position.

The quotations that were made earlier are simply out of context. They're inaccurate in just about every respect. In fact, not only has COSATU [Congress of South African Trade Unions] maintained its position and its support of sanctions, but COSATU, or perhaps NACTU [National Council of Trade Union], the second largest of the trade union federations, last November, endorsed disinvestment, so that both of the major trade union federations, the black leaders of whom you speak whose position we should not put ourselves in place of—to use the language of Mr. Keyes a moment ago—have been fully in support of sanctions.

It's important to keep that record straight.

It's also important, if I may address what I think is really a total red herring, which is the notion that somehow the sanctions legislation was devised more for domestic political reasons and as a symbolic act, rather than as an action designed to advance American national interest and to impact upon the process of change within South Africa.

The harsh reality Mr. Crocker a moment ago talked about we ought to be concerned about, the results. Well, we had six years of results, of constructive engagement, and those six years of results of constructive engagement yielded thousands of blacks being killed by the South African government, many more thousands arbitrarily detained and arrested, the repression vastly intensified.

We have seen in the past 5 to 6 years South African aggression against virtually every regional state in the region, South Africa continues to occupy Angola, it has launched raids into Mozambique and into Nosotu and into Botswana. It's attempted to overthrow the government of the Sashlows. My suggestion is that if that is the kind of results that one ought to advance to sustain a government policy, then I think we've got a very different notion about what kind of results we seek.

The fact of the matter is, constructive engagement has not worked. It has not worked for the very simple reason that the Afrikaners have been emboldened by constructive engagement policies of the past, to believe that they could retain their system of apartheid in place and preserve their monopoly of power, without fundamental economic cost and without lasting international isolation.

That's the signal that constructive engagement sent. Mr. Keyes, let me say to you that I don't know of a single government in the world, or single in the history of the world, where you have a minority dictatorship that has voluntarily given up power. Perhaps you can think of one. I don't know of any.

The instances in which a government or a minority regime have given up power is when they've been compelled to give up power. When they have concluded that there are more costs than benefits to be derived from trying to hold on to their monopoly of power.

And what became readily apparent to the members of Congress on bipartisan basis, and I give enormous credit to Senator Dick Lugar, the Republican Chairman at the time of the Senate Foreign Affairs Committee, and Republican Senator Nancy Kassebaum, for joining with democratic leaders in the House in voting to and

moving to mobilize Congressional support for the override of the President's veto on the sanctions legislation.

Because they understood, even if you do not, that the policies that the United States was pursuing at that point were inviting much greater bloodshed and violence, because they were persuading the Afrikaners they never really had to set about negotiating, because we were extending more benefits than costs in our policy.

Now, at some point, I hope there will be a willingness on the part of this Administration, and I recognize this as fantasy land, to begin to undertake some kind of serious reexamination of their resistance to sanctions. Because the reality is, every time the kinds of statements that were made today by Mr. Keyes and Dr. Crocker are advanced, they frankly weaken the effect of sanctions. Because the signal the Afrikaners pick up is that they still have an Administration fully prepared to essentially preserve the economic relationship that exists between South Africa and the Western world.

And that of course was the conclusion that was reached by the Eminent Persons Group, the Commonwealth Group of Nations, that tried desperately to mediate, to get a negotiated solution in process. And they concluded that it was the failure of sanctions all these years that has really been an invitation to the Afrikaners to hold onto power indefinitely.

The effort of sanctions is to minimize the violence, to minimize the bloodshed, to encourage negotiations. And again I find it absolutely extraordinary, if we were to substitute the words, "Soviet Union," for that of South Africa to see the same kind of arguments advanced today, it would never even be conceivable that all of you would be up here telling us that because the Soviet Union's repressive that we ought to back away from sanctions against the Soviet Union, that we don't want to hurt the Soviet people.

Of course we don't want to hurt the Soviet people, but we understood at the time we imposed sanctions on the Soviet and other repressive situations, that the short-term costs in terms of the additional pressure upon the government was likely to yield much less cost in the long term than the failure to move that government. And we also understood that American national interests were ill served by an accommodation of repression or an appearance of being an accomplice to apartheid.

That's the rationale of the sanctions policy, and that's why it is, in my judgment, terribly critical to see to it that the Administration effectively implements the legislation as it was enacted by the Congress.

Mr. ROTH. Mr. Chairman.

Mr. WOLPE. It's not my time, it's Mr. Clarke's time, and I'd be glad to yield back to Mr. Clarke.

Mr. CLARKE. I've just got a couple of quick questions for Mr. Newcomb in regard to enforcement.

Mr. Newcomb, the Journal of Commerce reported February 24 of this year that as part of their sanctions busting policy, the South Africans are transferring cargos between ships and reregistering their ships under foreign flags to hide the origin of prohibited imports.

According to written responses to questions submitted by the subcommittee, Customs has determined, in an investigation of lob-

ster tail imports worth millions of dollars, that the lobster in question was caught in or near the territorial waters of South Africa. Shipments of lobsters caught in or near South African waters were transferred between vessels. The vessels handling the lobster were reregistered to countries other than South Africa.

Is it your view that Congress intended to permit the import of banned South African products into the United States provided the South Africans could reregister their own ships under different flags or find other ships to bring them here?

Mr. NEWCOMB. First, let me respond by saying that Customs has informed me that there are a number of ongoing investigations in this area. But let me give a little groundwork, a little background here, in pointing out that Customs has a longstanding ruling concerning lobster or fish or seafood caught in foreign waters by ships of a different nationality. They take on the nationality for country of origin and duty purposes of the ships or vessels used in the processing the lobster or seafood or what-have-you.

And Customs has recently issued rulings consistent with that, I believe, it was a 1966 carry ruling that they made on that question.

Now, to the extent that there is a deliberate evasion involved of the South African flag vessel deliberately just transporting fish from one vessel to another vessel, well, that's an entirely different story, and my understanding is that there are a number of investigations ongoing in this area. And we are looking at it. We are enforcing it. And we do not believe that is the correct interpretation to merely change flags for purposes of circumventing the Act.

Mr. CLARKE. Under current Treasury policies, could any other product of South Africa that is banned from entering the United States enter our country provided it was on a non-South African vessel?

Mr. NEWCOMB. The seafood situation is the typical example, and to my understanding, it is the exclusive example of this type of transshipment scheme.

However, I would point out that there are certainly others that perhaps exist, and Customs is working with us to try to detect these kinds of schemes and enforce against them to insure that the intent of the Act is adequately and properly enforced.

Mr. CLARKE. Could you comment on these other possible violations: paying businessmen in Singapore to be conduits for South African steel? That appeared in the Christian Science Monitor last October.

Using Swaziland as a base for finishing exports that are then labeled, "Made in Swaziland"? That was in the Washington Post.

Or using Thailand to undermine U.S. sanctions by having South African steel manufactured there into steel pipes and then shipped to the United States.

Has anything been done to investigate these press reports?

Mr. NEWCOMB. We certainly are interested in following up on all types of allegations like this.

I know that Customs has made many attempts at investigating types of transshipment schemes and false origin labeling type of activities like this.

I can't comment on those specific ones, because I don't know the status of the investigation that they're in but I can absolutely

assure you that Customs will apply its normal rule of origins in those situations and indeed if a substantial transformation has not taken place, an investigation will be opened and enforcement action will be initiated.

Mr. NEWCOMB. Thank you, Mr. Chairman.

Mr. WOLFE. Thank you, Mr. Clarke, and thank you for yielding earlier.

Mr. Bilbray.

Mr. BILBRAY. Yes. You know, I've been out and back and forth, voting, like everybody else in the group.

And you may have already answered this question, but you know, we've been talking a lot of emotion here, but as to the facts like the GNP for South Africa, since the sanctions were imposed, can you give us some facts and figures on how much trade they are doing worldwide?

Have we really affected them materially in the pocket, not just talking about black versus white, or anything like that, but just the real facts so we'll know what these sanctions have done.

Mr. CROCKER. Mr. Bilbray, the sanctions in the Comprehensive Anti-Apartheid Act of 1986 would affect about 20 percent of South Africa's exports to the United States or about 2 percent of South Africa's worldwide exports, assuming that no substitute markets are found and no circumvention. That's because we represent about ten percent of their total worldwide export market.

In fact, South Africa's total exports have continued to increase since the imposition of our sanctions bill due to the decline in the value of the Krugerrand, the rise in the gold price, and the availability of alternative markets for most, if not all, of these products.

Hence, we would judge that the economic impact has been marginal. Such brunt as there has been has fallen on workers in those sectors affected; textiles, for example, or coal or sugar.

I think, though, we need to look at the long-term picture. Over the longer term, such an impact can have the effect of reducing growth prospects marginally; it can have the impact of reducing foreign investment, as we've already seen; it can have the effect if others do it, if others were to follow our lead.

Mr. BILBRAY. Well, in my regard now, what you've been talking about is the percentage that the U.S. market that's been affected by the sanctions.

Has any survey been done by your office to show who is buying the products that the United States by sanctions is no longer refusing? Are those products going to our western European allies? Are they going to middle—say South America or other African countries? Are they going to Eastern Bloc countries?

Where are those products going that we're not buying? Because if they're increasing their trade, it does not necessarily mean it's being done within that area that we are cutting out. They may be losing that market.

Mr. CROCKER. That's right. There could be some displacement by other things. For example, the gold price clearly is a factor here, and it has gone up.

Mr. BILBRAY. But I mean have you done survey, something in writing that we could look over, members of this Committee can look over to see what the overall affect of these sanctions are?

Mr. CROCKER. I don't believe at this early date, and I would emphasize it's early, it's 8 months since the bill was passed, that we have anything like comprehensive direction of trade data, nor am I sure the South Africans publish it for obvious reasons, but we will certainly check on that. If you want to request something, we can give you what we've got.

Mr. BILBRAY. And as a new Member of Congress and a new member of this Committee, I'd really like to see the end effect of what we did 8 months ago, even if its 4 months from now before the final report would be in. But I'd like something in writing that I can sit down and analyze and just see what the effect is.

Mr. CROCKER. Mr. Bilbray, on the last point you made, of course we are mandated, and will meet the mandate to report to the Congress on the anniversary of the bill. If you would like us to pull together what we have in the way of trade data and that sort of thing we can certainly and will certainly do that.

I addressed myself in an earlier exchange to some of the political aspects of the situation that have come since the bill. I think I stated it. In fact, I understated it, unlike in some respects what the Chairman said when he was categorizing our record of our policy, I tried to understate it. I just stated what's happened in the past eight months.

Mr. BILBRAY. Well, I'm very open-minded and that's why I want to hear both sides of the argument. I know the Chairman talks to me a lot and I'd like you to talk to me a lot too to hear both sides of what's going on. And hopefully, we can work out a solution.

Mr. WOLPE. Well, let me just indicate, before I recognize Mr. Dellums, that I don't have a bias against the State Department. In a few moments, I'll be on the House Floor doing my best to defend the Administration's position on some of these matters.

It's just on this particular subject, we have some differences.

Mr. Dellums.

Let me say that Mr. Dellums is not a member of our Committee, but I'm delighted to have him join with us today in this hearing. It was the Dellums Amendment I think that provided the key impetus for the ultimate passage of the limited sanctions bill that did prevail in this Congress and over the Presidential veto, and I just thank him for his enormously significant leadership on that question.

Mr. Dellums.

Mr. DELLUMS. I thank the gentleman for his very kind and generous remarks.

And Mr. Chairman and Members of the Committee, I am deeply pleased and honored that you've provided me the opportunity to join you today in these oversight hearings. I choose not to ask specific questions with respect to the implementation of the 1986 comprehensive sanctions bill. You gentlemen here are more than competent to do that.

I would like to spend whatever time you've accorded me and generosity you've directed to me to ask the Secretary some rather general questions.

Mr. Secretary, neither of us, you nor I, can state to a moral certainty that the tactics, the strategy, the policy that we respectively embrace will indeed bring an end to apartheid. We live in a world

of judgments; you have yours, I have mine. The Administration has theirs, the Congress of the United States has theirs.

We live in a world of judgments.

I wish to broaden this discussion. I in attempting to bring disinvestment and total embargo against South Africa was honest enough to say that I do not see sanctions as an end; simply as a tactic, as a strategy. Again, living in a world of judgments, you make a judgment call.

The reality is that human beings, black human beings are suffering and dying in South Africa. Apartheid is indeed a reality. And that whatever the strategies that have been implemented to this date have not been effective. I don't think that's discussible, debatable, or negotiable. That is indeed a reality.

So we come to a moment of saying what tactics and what strategies should we embrace in order to make some effort to try to bring down apartheid. Bringing comprehensive sanctions against South Africa may or may not work. We cannot say to a moral certainty that it would. But I offered it, and many of us joined in offering it, because we thought that this country needed to make three statements:

One to ourselves, the second to South Africa, and the third to the World. To ourselves, we are a multiracial nation that has embraced the principle, at least ostensibly, that all human beings are equal human beings. And so in a multiracial society it is indeed as much about South Africa as it is about the United States, because we ought to have internal consistency and continuity.

You cannot say to a multiracial group of people that we believe in the sanctity and the dignity and the worth of human beings and are in bed with the most racist and repressive regime on the face of the earth.

So No. 1, we needed to say something to ourselves.

Second, we needed to say something to South Africa, that as a nation committed to democratic principles, constitutional government to the rule of law, to the rule of law, that we in this nation feel that apartheid is something abhorrent to the values upon which this nation is ostensibly developed.

And third, we needed to say to the world, and here's my point of departure from you, Mr. Crocker, I do believe as a major super power, that our foreign policy ought to say something to the world. It's not just as you stated, a few Americans making their statement to impose their decision upon someone else. One of the best unkept secrets in the world is how this government feels about the Soviet Union.

But I don't know how we actually feel about South Africa. And so one of the statements we needed to make to the world is how we felt about South Africa. To make that statement, a moral statement, a political statement, or whatever. And that's a judgment call.

So I would like you to respond, based on that broader assessment of it not just being an internal struggle in this country to play political games, but to say something to ourselves, to South Africa, and to the world.

Finally, I've listened to you on a number of occasions. I'm honored, Mr. Chairman and Members of the Committee, that you've fi-

nally given me an opportunity to ask Mr. Crocker the question that I have screamed at the television, screamed at the newspaper, and screamed at transcript hearings that I've heard.

You stated over and over again what does not work. Sanctions do not work. We are marginal players, you said here. Answers are not easy. Well, I want to give you this enormous fantastic platform. Tell me, Mr. Crocker, convince me, how do you end apartheid? What is your plan for ending apartheid?

Show me that your judgment is so powerful that you can to a moral certainty guarantee more profoundly than those of us who believed in sanctions as a tactic and a strategy to end apartheid, could be effective? Show me that you indeed have the answer. And if you can convince me that you have the answer, that you can argue to a moral certainty that sanctions do not work but you have the answer, give us this great answer.

Because thousands of my people are dying in South Africa, and that's not a smiling thing, Mr. Keyes, that's a serious thing. I've cried over this. I've felt great pain and great agony over this. I'm not here to gesture. I want to know, how do you end apartheid? I'm not here as an oversight committee person, gesturing with the State Department. I don't deal with you folks very often.

I'm simply here asking a very human and important question. I represent a constituency that's very aggressive about their concerns with respect to this issue. So, No. 1, I'm asking you to respond to the broader assessment of do we indeed have a responsibility say something to a multiracial society? Do we have a responsibility to say something on the basis of values to South Africa? Do we have a responsibility to say something to the world?

And then, second, give me your answer. You have stated eloquently and powerfully on numerous platforms what does not work. Tell me what will work. Tell me how to end apartheid.

Mr. CROCKER. Mr. Dellums, there is no monopoly of moral indignation on the issues of apartheid.

Mr. DELLUMS. I don't suggest that there is. I stipulate that you and I are morally outraged. Give me your reason, your strategy, your plan.

Mr. CROCKER. One of the things that I hope—

Mr. DELLUMS. And I'm not, sir, just one point.

I'm not challenging your dignity nor your integrity. I have never once in this Congress ever attacked any human being. This is not a personal matter here. This is not posturing. We are talking about human beings and life and death in a very powerful and profound fashion.

Let the record show that I'm not about the business of you and I engaging in sword fighting. That's off the wall and petty and mundane and pedestrian and earthbound. I'm talking about something much more important, all right?

Mr. CROCKER. Well, I don't want to be earthbound anymore than you do, Mr. Dellums. So let me just refer to the fact that, as I said in my prepared statement for this hearing today, I think the debate last year made it clear that there isn't any division in this country about the system down there, about the brutality down there, about what the government is doing to the majority of the people down there.

And I think Americans are rightfully proud of the fact that among nations around the World, we tend to care more about those kinds of things, and we speak about them more than almost any society I know.

And I'm proud of that. But it is not at all an issue between us and the Executive and the Legislature. The question is, I think, we have an obligation to make judgments just like you do. We also have an obligation not to make matters worse. We have an obligation to recognize that the people who are going to end apartheid are the people of South Africa.

And it's our goal, I would have thought, to try and use what influence we have to make it more likely that they will end apartheid, rather than less likely. That's the only area that I think we differ on.

We have said that apartheid will not go away because we do, because our flag comes down, because our firms go home, because our standards are removed, because our trade is removed. We have limited influence. We want to in fact expand that influence, not contract it.

But the issue that you're posing is one of saying, do I have moral certainty for an alternative strategy?

Mr. DELLUMS. Yes.

Mr. CROCKER. The certainty I have is let's keep those elements of opportunity that now exist for blacks and whites to shape their own future and not make it more and more likely that they will not do that, because they'll be driven into polarization, they'll be driven into a scenario of economic destruction, and as the Chairman said, white suicides, a moment ago, which I don't think is really a formula for solving the problem, either.

Let's try not to polarize it, let's try to bring people together. We can do it through our contacts and our diplomacy. It may take time, but I'm as impatient to see that lousy system ended as you are, Mr. Dellums.

Mr. DELLUMS. Mr. Chairman, may I ask unanimous consent to follow on?

I asked you to give me your plan. You said what will not work. What will work, sir? You have not answered that. I've listened very carefully and with rapt attention, and I'm communicative and I'm able to understand. And I have not heard you respond to that question.

Mr. CROCKER. I think I've said what will work in my answer—

Mr. DELLUMS. What will work?

Mr. CROCKER [continuing]. To the previous questions and to your question.

Mr. DELLUMS. What will work?

Mr. CROCKER. We must have a diplomacy that's involved, that's in touch with everybody. We must be challenging all the parties to come up with ideas to challenge each other to test each other, to come up with that formula which will end the violence, get people out of jail, and get an agenda for discussion on the table.

We must in other words use our diplomacy. We must also build institutions, strengthen institutions. The question for example of the black trade union movement has been discussed tangentially

here today. It is the strongest single power base of black South Africans.

Is it going to be strengthened if two million people are put out of work by the adoption of comprehensive mandatory sanctions internationally, the estimate of COSATU, itself? We say, no.

Mr. DELLUMS. That's a rhetorical statement.

I would simply say that jobs without dignity and jobs without rights and jobs without the ability to participate in the body politic that affects your lives on a daily basis, is indeed slavery, sir. A job alone is nothing.

Mr. KEYES. Mr. Chairman, if I might?

Mr. DELLUMS. Yes, sir.

Mr. KEYES. We are not, I think, talking about jobs. I think the emotion that you express is deeply shared by all of us. But I think there would be no greater tragedy in South Africa in that all these years of oppression should end with the black majority participating in a government that rules over the rubble.

We clearly as Americans expressing American principles and pursuing American values believe that there is another way to achieve democratic solutions. Our analysis of the kind of powers that shape political change is an analysis that reaches the conclusions that human beings are able to shape their destiny without destroying their future.

That's what democracy has meant in this country. And that's what it can mean in South Africa. And I think if we look at the history of the country we can see that, contrary to what everybody says, the black people in South Africa have not simply been the helpless victims of apartheid. They have known what power they could have, and they have done their best to make use of that power.

They have not simply accepted the situation; they have reshaped the situation to the degree that they could. And if you want a solution, I am not sure that it's a solution we are going to impose, but I do see certain things that I derive from looking at what the black South Africans themselves have done. And the answer to your question is not an approach that destroys the venue for their power, but rather black empowerment and the support of the development of that empowerment in the precise venue in which black South Africans themselves have found it, and that means that when you talk about jobs, you are not talking about just people going to work.

I mean, I know there's a certain amount of contempt for the working man that exists abroad in the world, but I think that the most important force for shaping social change has precisely been the ability of working people in this country and in other parts of the world to ban together, to organize, to move peacefully to shape revolutions.

It happened in this country, and it is happening in South Africa today. And the question we should be asking ourselves is with that kind of a potent powerful tool, both in potential and in reality on the table in South Africa, how do we shape the situation so that tool can shape the future.

Eighty percent of the labor in South Africa is provided by black people, 80 percent of the labor. That means that the power in that

society is concentrated in the hands of blacks, and the question is, how do you help them effectively to organize and use that power. Now, when I see what they've been able to accomplish in spite of repression, in spite of every attempt to break that power, I say to myself, in the critical area, apartheid has failed.

And what we have to do is exploit that failure. And that failure has occurred in the modern economic sector; it has occurred in the context of the provision of an inevitable power base. It's not something that you ask where the pressure comes from? It hasn't come from outside.

You give yourselves too much credit. The black people of South Africa have been able to organize themselves to put effective pressure on the situation, and our question should be, how do we back them up. We should look at the tools that they have used. We should put our resources and not just our words behind it.

It's not a question of how we feel. It's a question of what we do. And after we've washed our hands of the situation, after we have walked away and made ourselves feel good, they will still have the struggle, they will still have to decide how to use those tools, and if we don't support them, those tools will be useless.

And if we destroy the modern economy in which those tools have evolved, then they will certainly, they will certainly be destroyed along with it. So it seems to me that the answer to your question is precise and clear: it's an answer which one takes from the actions of black South Africans. And it says true black empowerment, and the use and the development of that organizational power base, and that is the way in the future in which negotiations can come about. And we are not talking about negotiations between unequals; we're talking about negotiations between people that will have proven that they cannot exist without one another.

And the white South African Government will yield in the end, not because it wants to, but because the future for blacks and whites in South Africa will be impossible unless such negotiations occur with the kind of power base we can help to develop for the black community.

Mr. DELLUMS. Mr. Chairman, thank you for your generosity. I've succeeded in one thing. I've made this a more animated hearing, I think.

Mr. WOLPE. Thank you very much, Mr. Dellums.

I would like to turn, if I may, for a couple of minutes, to the question of computer sales and the implementation of the computer sale provisions by the Administration.

Based upon the written responses that we have received to questions posed by the subcommittees, it appears that there's been virtually no change in the value of computer exports to South Africa, despite the President's Executive Order of 1985, and the Anti-Apartheid Act of 1986.

Exports were \$115.8 million in 1985; \$119.3 million in 1986, and in the first quarter of 1987, they were \$27.6, so that is the same rate of supply. I take it, if I may ask this of the Commerce Department, you approved 452 computer licenses in the first four and a half months of this year, but initiated only 26 pre-license checks during a slightly longer period.

It was seen then that in 95 percent of the cases, we do not perform preclicensing checks. Is that accurate?

Mr. FREEDENBERG. I think you have to ask the question of how, (a) how those checks affect compliance with the Act, and (b) how those checks relate to the total resources and the total checks around the world.

We don't do checks on a basis of 100 percent anywhere in the world. In fact, we have the highest percentage of checks in South Africa right now.

Second, the checks that we've made with regard to post-shipment preclicensing—and, particularly post-shipment checks—have shown a general compliance. There's an unhappiness but an understanding that the Act does not prohibit sales of computers to South Africa, it simply prohibits sales of computers to the apartheid enforcing agencies. While they're not happy, they have given us the assurances we want and given us the evidence that they are complying.

In any enforcement effort, as you've looked at, for example our income tax, you do spot checks. You see that the law is being enforced. If you find some evidence of the contrary, you look through your intelligence and see what evidence there is of wrong doing and then you pursue it.

So I think our checks which represent 40 percent of the post-shipment checks, we do what we've done in the first 5 months around the world, show a high level of effort and indeed a general level of compliance.

Mr. WOLPE. Well, you know, I want to come back to that question of this notion of we'll just treat it kind of like income tax, random audit.

I find that a rather unusual response to a situation in which the Government has announced in advance, the South African Government, that it's in to sanctions busting. I mean, here you have the situation in which you have the government that we are supposed, whose activity is the focus of the sanction that's in place, telling the United States that it intends to do everything it can to bust those sanctions, and you're telling me and this Committee, that you treat it as you would any other kind of random audit, as in the case of tax returns.

Mr. FREEDENBERG. I think I said that we put the highest level of effort per license into South Africa and that if we were to find non-compliance because of the standards in the Act, we would no longer license exports of computers to South Africa. We take it very seriously.

Our computer sales to South Africa have held steady, 86 over 85, but sales from other countries to South Africa have increased. For example from Taiwan have increased fivefold 85 to 86, so South Africa is definitely, buying more computers, but they're buying them from other countries.

Mr. WOLPE. I want to come back to that in just a moment.

In response to the subcommittee's written questions, the Department indicated ignorance of the estimated 1,000 arms score contractors. Since these would appear to be a prime vehicle for diversion of equipment to the arms industry and South Africa has explicitly frequently placed reforms such as sanctions busting, why are you not doing anything to discover who these contractors are?

Have you asked our defense attaches to assist with this? How else can prelicense checks be effective against diversion?

Mr. FREEDENBERG. Well, again, we have gotten assurances from the end-users, certification that they are not contracting either with the Army or with the apartheid enforcing agencies. When we see any evidence of that sort of contracting, we pursue it.

But it is difficult in a society like South Africa to be sure of all business contacts with all parts of the country. We have not found any evidence that there is this diversion to either military police or apartheid enforcers.

Mr. WOLPE. I guess the question I'm asking is, How aggressively are we seeking such evidence?

Mr. FREEDENBERG. The aggressiveness has to do with looking at both the intelligence reports that we get, and with investigating in the most vigorous way, post-shipments of computers. There are limits in a sovereign country to how far we can investigate or whether we can put our people with their computer 24 hours a day.

But to the limit of our resources, we have pursued this issue.

Mr. WOLPE. Well, your written replies acknowledge that there's minimal use of post-shipment checks and the techniques used even in post-shipment checks will not ferret out all possible unauthorized usage.

And yet, you insist that the Anti-Apartheid Act's provision that no computer may be licensed unless a system of end-use verification is in effect to insure that the computers involved will not be used for any function of an Anti-apartheid enforcing entity. You also insist that that provision's not being violated by your licenses and should be interpreted reasonably.

Given a system where you are unaware of military contractors, where you performed less than five percent pre- and post-shipment checks, and acknowledged the means for evasion such as time sharing access arrangements by illegitimate users, how can you reasonably conclude that the end-use verification system called for by the legislation is in place?

Mr. FREEDENBERG. When we have end use verification, part of what we try to pursue is whether there are modems or remote work stations, et cetera. We have to again, in the case of South Africa, to the extent possible within our resources have pursued spot checks around the country to see that indeed they are not using these computers for other than the stated end use.

And, again, within the Western world, it's the highest percentage level of post-shipment checks that we do. It's a very high level of involvement, high level of resources. It's not perfect and unless you interpret the law to mean that you have to have somebody on location 24 hours a day, you can't be sure that there wouldn't be some unauthorized use at some time. But to the degree that we are able to investigate, we have not found evidence of that at this point.

We will continue to be very vigorous in this area, and if we find such evidence, we simply won't, either license to that particular end user, or if we found it within an agency, we would cease licensing exports to that agency or to that government.

Mr. WOLPE. You refer to evidence that South Africa is buying increasing numbers of computers from other sources. There was a July 1986 report by the U.S. Foreign Commercial Services that

noted that in 1986, important purchases were made and orders placed for large installations by previously loyal users of American Computers. Hitachi was a particular beneficiary, the article claimed.

And Hitachi has denied, strongly denied any sales to South Africa's police or to any apartheid enforcing agency, states that its German partner, BASF is conducting frequent on-site inspections to verify the location and use of all Hitachi built computers that it sells in South Africa.

My question is do we have any information that since the United States strengthened its computer controls in 1985, that Hitachi or any other foreign computer companies have been replacing previous U.S. sales to apartheid enforcing agencies?

Mr. FREEDENBERG. I'll try to get you some evidence or some information in writing. We have assurances from the Japanese that they will not fill in behind us. I can't give you, it's difficult as I say, because we're not given access to these locations to say whose computers are there and under what circumstances.

I can't give you information at this point, but I'll try to get as much evidence as possible.

Mr. WOLPE. Do you have any evidence of any country, any specific evidence of another country that has come in behind the American sanction to provide new computer sales to the apartheid enforcing agencies?

Mr. FREEDENBERG. Not specifically apartheid enforcing, but when we have our checks, or when we have our commercial people talking, we hear all sorts of anecdotal remarks that we'll get it from somewhere else; we'll get it from Europe or we'll get from Japan. Since we would have no business on the premises, once we are no longer checking American technology, it's difficult for us to verify just anecdotal information.

Mr. WOLPE. OK. Let me now yield to another colleague who is not again a member of the subcommittee but has been very intimately involved in the development of the anti-apartheid legislation, particularly those provisions related to the subject of uranium.

And I would like to call upon Mr. Richardson now for 5 minutes of questions he may wish to put on that subject.

Mr. RICHARDSON. Thank you very much, Mr. Chairman.

And I appreciate the opportunity to come and listen to this testimony.

Before I proceed with some questions I want directed at the Treasury official, I'd like to admit two biases: One, I have supported the Dellums approach all the way, and I feel that that has been the correct approach in our policy.

And second, as the author of this uranium amendment, Mr. Newcomb, with all due respect, I must say that I think the Treasury Department is violating the law, at least the intent of this member who authored this amendment.

When we passed Section 309, we banned the importation of a number of South African items, among them was uranium. Shortly thereafter, to our surprise, we found that our ban was not a ban at all since there are two loopholes which have rendered the Section ineffective and meaningless. Treasury Department, which has re-